

# Lake Sawyer Dock Project

## Contract Documents

*Prepared for*  
City of Black Diamond



March 2024

# Lake Sawyer Dock Project Contract Documents

*Prepared for*

**City of Black Diamond**  
24301 Roberts Drive  
Black Diamond, WA 98010

*Prepared by*

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**March 2024**

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# Legal Documents

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# REQUEST FOR BIDS FOR LAKE SAWYER DOCK PROJECT CITY OF BLACK DIAMOND

The City of Black Diamond is requesting work to build a new floating pier boat dock on Lake Sawyer at Lake Sawyer Park, 22480 SE 296<sup>th</sup> Street in Black Diamond, Washington. The City is requesting lump sum bids for the entire scope of work as defined in the attached bid proposal form/Scope of Work. Scope of Work includes installing piles, aluminum ramp with railing, floating pier, and freestanding aluminum boatlift with attached translucent canopy, solar panels, as well as installing security fence around the boat slip. All **in water** work shall be completed by April 30, 2024. The city's estimated project cost is \$145,000.00.

Small Works Roster bids must be turned in electronically in pdf format to Ryan Sweet, Capital Project/Program Manager, **by 11:00 am on April 2nd, 2024**. If you are unable to submit your bid in electronic format, please contact Ryan for other arrangements. The pdf copy of your bid must still be signed. E-mailed bids shall be sent to and received by Ryan Sweet: [rsweet@blackdiamondwa.gov](mailto:rsweet@blackdiamondwa.gov) by the time stated above. The City will not accept late e-mail submittals or those delayed due to file sizes or incorrect e-mail addresses. An acknowledgment that the bid was received will be sent. All contract documents, plans, specifications, and addenda will be published on the City's Small Works page on the City's website: <https://www.blackdiamondwa.gov/small-works-roster/pages/projects-bidding>.

Invitations to bid will be sent to all contractors registered on the City's Small Works Roster located at <http://www.mrscrosters.org> under the category of "Marine Construction" and sub-category of "Dock/Wharf/Float Construction, Repair, and Maintenance" at the time of advertisement. Bids will also be accepted from contractors registered on the Small Works Roster at the time of bid closing. Prevailing wages will be required for this work. This project is subject to Rule 170. Please include Washington State Sales Tax of 8.7% with your bid.

**Bid guarantees, such as bid bonds, will not be required for this bid. There will not be a public opening of bids.**

## **REQUEST FOR BIDS**

### **CITY OF BLACK DIAMOND Lake Sawyer Dock Project**

#### **BID FORM, SCOPE OF WORK, AND SPECIAL PROVISIONS**

The City of Black Diamond is hereafter referred to as “the City.”

1. The undersigned hereby certifies that (he/she) examined the location of the project as outlined in the bid documents for the City of Black Diamond Lake Sawyer Dock Project and is familiar with the local conditions at the location of the work to be done, and has read and thoroughly understands the work that the City requires to be completed, the Contract governing the work and the method by which payment will be made for said work in accordance with the City Contract at the proposed bid prices contained herein.
2. The bid shall be awarded by the sum of the total of the bids for the 1 category of work in the Request for Bids.

The undersigned has checked the amounts below and understands that the City will not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

In order for the Owner to consider a bid, all items on the bid must be filled in completely.

Bid Item #1 “Boat Dock Complete” encompasses all time, material and labor costs in order to complete the work, including materials not specified in the bid proposal. All materials shall meet the requirements shown on the plans and that normal and customary for the intended use. The lump sum Contract payment shall be full compensation for all costs incurred by the Contractor in performing the work as shown on the plans and in compliance with all permits.

3. Bidders shall provide a minimum of 3 past projects of similar scope including project references and contact information (email address and phone number).

Bidder:					
Years of Experience:					
<b>Experience</b>					
Project/Year	Project Owner	Contract Amount	Owner Contact Person	Phone Number	Project Description (type, size, etc.)
<i>Floating Pier Dock Projects</i>					

4. It is agreed that this bid may not be withdrawn within a period of sixty (60) days after the date set for the opening thereof.
5. In accordance with this bid and the City Contract, the undersigned further agrees to so plan the work and to prosecute it with such diligence that said work shall be commenced within ten (10) days after issuance of a notice to proceed.
6. Receipt of the following Addenda to the Plans and/or Specifications is hereto acknowledged:

**Addendum**

<u>No.</u>	<u>Addendum Receipt Date</u>	<u>Signed Acknowledgement</u>
1.	_____	_____
2.	_____	_____

NOTE: Failure to acknowledge receipt of the Addenda may be considered as an irregularity in the Bid.

7. The undersigned hereby proposes to complete the attached scope of work and hourly rates at the following prices according to the City Contract, this Bid, and the Bid Solicitation:

BID PROPOSAL					
City of Black Diamond – Lake Sawyer Dock Project					
Rule 170 (WAC 458-20-170) applies to this project.					
ITEM NO.	ITEM DESCRIPTION	UNIT	UNIT PRICE	QTY	TOTAL
1	Boat Dock Complete	LS	\$	1	\$
<b>BID SUBTOTAL</b>					\$
<b>WASHINGTON STATE SALES TAX (8.7%)</b>					\$
<b>TOTAL AMOUNT BID</b>					\$

\_\_\_\_\_  
Bidder

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor's License No.

\_\_\_\_\_  
Contractor's Washington UBI No.

By \_\_\_\_\_  
Authorized Official

Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTES: 1. If the bidder is a co-partnership, so state, giving firm name under which business is transacted.  
2. If the bidder is a corporation, this bid must be executed by its duly authorized officials.



## NON-COLLUSION DECLARATION

**Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.**

## NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

## NOTICE TO ALL BIDDERS

To report rigging activities call:

**1-800-424-9071**

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

## PROJECT GENERAL NOTES:

1. Unless specifically identified as a duty of the City or Project Representative, on the drawings or in the specifications, all work shown or described in the drawings shall be performed by the Contractor and the Contractor shall furnish all labor, materials, equipment, tools, consumables (including water and power) and incidentals needed to accomplish this work.
2. City will provide all permits to the Contractor upon receiving permit approvals. Contractor shall comply with all requirements for all permits. If permit requirements increase the project cost to the Contractor from the original bid, the Contractor may submit a revised bid to the City up to 5 working days after receiving permits. This Contract may be terminated at the direction of the City upon receiving the revised bid.
3. A pre-construction meeting with City staff and Contractor shall be conducted prior to site mobilization and start of construction.
4. All construction shall be in accordance with:
  - a. The project drawings and specifications, including any amendments.
  - b. The [City of Black Diamond Engineering Design and Construction Standards](#).
  - c. The 2024 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, M41-10 (referred to in the project documents as the “Standard Specifications” or as “WSDOT Std. Specs”).
5. In the event of conflicts with these standards, precedence shall be given in the order listed in Item 4 above.
6. Construction truck traffic shall be routed as per the City of Black Diamond Public Works Department. Construction vehicle track-out of dust, dirt or mud may trigger violations of the Black Diamond Municipal Code, or other applicable regulations requiring fee, penalty, or street sweeping at the Contractor’s expense.
7. Construction activities shall be limited to daytime hours (7:00 AM to 8:00 PM). There shall be no construction on Saturdays, Sundays, and City-observed holidays unless approved by the City. Contractor shall submit a request in writing to the City and receive written approval prior to beginning work on these days. Additionally, at such times when the weather conditions adversely impact the Project, the City shall have the authority to close construction activities on the site until conditions are favorable for this type of work. If it is necessary to close public access to the boat launch during construction, the Contractor may close the boat launch for a maximum of 3 days. The Contractor must also coordinate with the City at least 2 days in advance of the closure.
8. Locations of existing water valves, gas valves, sewer manholes, and monument cases are not shown in the plans. It shall be the responsibility of the Contractor to verify the location of water valves, gas valves, sewer manholes, and monument cases within the project to protect them. Contractor shall protect existing survey monuments and shall perpetuate all monuments in accordance with State regulations; and shall develop and submit required reports, if necessary. Contractor shall protect existing survey markers and property markers. Contractor shall notify utilities for locates at least 72 hours prior to beginning construction.
9. A copy of the approved Plans and Specifications must be on-site whenever construction is in progress.
10. Once mobilized on site, Contractor shall proceed with the work in a manner that minimizes the duration of the Project and minimizes adverse impacts to property owners, businesses, and the general public.
11. Contractor is solely responsible for developing and submitting a Traffic Control Plan and furnishing traffic control devices and flaggers, including detour signs and information, if allowed by the City.
12. All traffic and pedestrian control and signage shall comply with the latest version of the Manual of Uniform Traffic Control Devices (MUTCD).
13. The Contractor shall restore the public Right-of-Way, including private improvements within the public Right-of-way, and restore private property, after construction, to a condition equal or better than the condition prior to entry or start of work.

14. Archaeology: In the event that archaeological or historic materials (including human remains) are discovered during project activities, work in the immediate vicinity shall stop, the area secured, and the City, State Department of Archaeology & Historic Preservation, and concerned tribes notified, and any related issues shall be resolved before construction work continues.
15. The lump sum Contract payment for "Boat Dock Complete" shall be full compensation for all costs incurred by the Contractor in performing the work as shown on the plans and in compliance with all permits.
16. All existing utilities within the project limits (if any) shall be protected by the Contractor. Costs for protecting existing utilities, monuments, and survey markers are incidental to the lump sum bid as described in Item 16.
17. The Contractor shall furnish the City with copies of the supplier's warranty, and adopt the same as the warranty of the Contractor, and shall also be liable thereon to the City.
18. Contract time shall begin on the first working day following the Notice to Proceed Date. All in-water work shall be completed by April 30, 2024.
19. Boat lift shall be a Basta over-center hydraulic aluminum 6k lift or approved equal.
20. Boat lift canopy shall be a Basta Solo 26 with translucent canopy or approved equal.

## CITY OF BLACK DIAMOND

Department of Public Works  
P.O. Box 599 – 24301 Roberts Drive  
Black Diamond, Washington 98010

### PUBLIC WORKS CONTRACT SMALL WORKS

1. **Contract and Parties.** This Public Works Contract-Small Works ("Contract") is between the CITY OF BLACK DIAMOND, King County, Washington ("City"), a Washington municipal corporation and \_\_\_\_\_ ("Contractor"), a corporation organized under the laws of the State of Washington, whose address is \_\_\_\_\_. The City and Contractor are each a "Party" and together the "Parties" to the Contract. The Parties agree as follows.
2. **Project.** The Parties enter into this Contract for purposes of Contractor providing the City with equipment, materials and performing work for the City ("the Project"), generally described as:  
  
Lake Sawyer Dock Project, including those additives, if any, specified in the bid award.
3. **Effective date.** This Contract becomes effective and binding upon the Parties, including each Party's heirs, successors, and assigns, immediately upon execution of this contract by both parties.
4. **Notices to Parties.** Contractor agrees to accept notices under this Contract via facsimile or email. It is the responsibility of Contractor to notify the City in writing if any of the contact information appearing below should change. Any notices required shall be in writing and delivered to the following addresses. If notice by email, a hard copy shall be delivered or mailed the same date as email.

CITY:

CITY OF BLACK DIAMOND  
PO Box 599 – 24301 Roberts Drive  
Black Diamond, Washington 98010  
Contact: Ryan Sweet  
Phone: (360) 469-9314  
Fax: (360) 851-4501

CONTRACTOR:

[CONTRACTOR]  
[ADDRESS]  
[CITY, STATE, ZIP]  
Tax ID # \_\_\_\_\_  
Contact: [NAME]  
Phone: [NUMBER]  
Fax: (\_\_\_\_\_) \_\_\_\_\_

5. **Notice to Proceed.** Contractor shall provide a performance bond, insurance certificates, a City business license and statement of intent to pay prevailing wage rates within 10 days of receiving a notice of award. The City expects to issue a notice of award on or about April 5<sup>th</sup>, 2024. Upon timely receipt of the bond, insurance certificate, business license and

statement of intent to pay prevailing wage rates, the City will thereafter have ten (10) days to issue a notice to proceed. April 30<sup>th</sup>, 2024 shall be the deadline for completion of all **in water** work in accordance with the terms and conditions of the Contract. The deadline for completion of work may be extended, if the notice to proceed is delayed. The contract will stay in full force and effect until all obligations of the contract are satisfied.

**6. Obligations of Contractor.** The following terms and conditions apply to this Contract:

*A. In general.*

- (1) Responsible for all labor and work. Contractor shall be solely responsible for furnishing all labor and performance of all work necessary to complete the Project as required.
- (2) Responsible for furnishing all materials and equipment. Contractor shall furnish all materials and equipment necessary to complete the Project, except for any materials expressly agreed in writing to be provided by the City.
- (3) Documents incorporated by reference. All terms and specifications contained in any Request for Bids that was issued by the City as part of determining the awarding of this Contract are hereby incorporated by reference and must be complied with by Contractor, unless one or more of such terms and specifications are expressly amended or waived in writing by the City. The contract documents that the contractor shall comply with are: (1) this contract (2) the City's Construction Standards; (3) the most recent WSDOT Standard Specifications for Road, Bridge and Municipal Construction; (4) Contractor's proposal; (5) the solicitation for bids including the roadway section design, the project and reconstruction limits
- (4) Laws and regulations to be followed. Contractor, its employees, agents, and subcontractors, shall at all times fully comply with all applicable laws, regulations, and administrative rulings in performing work for the Project.
- (5) Work Hours. Contractor shall not work on weekends. On Mondays through Thursdays, Contractor shall not start work before 7:00 AM, and shall not work after 6:00 PM. Contractor shall not start work before 7:00 AM on Fridays. Contractor must be off the street and shall not work after 3:30 PM on Fridays.
- (6) Conditions of Work. By submitting a proposal in response to the City's solicitation for quotations, Contractor represents and warrants to the City that Contractor has fully informed itself of all conditions relating to the work involved for completing the Project. In prosecuting the work, Contractor shall employ such methods or means as will not interfere with or interrupt the work of the City or its agents, employees or contractors.
- (7) Contractor's Responsibility. Contractor will prosecute the work in accordance with instructions, descriptions and/or plans and specifications provided by the City. Contractor shall carry on the work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged or destroyed, at his own expense and to

the satisfaction of the City. When materials and equipment are furnished by others for installation or erection by Contractor, Contractor shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by Contractor. Contractor shall procure all permits (unless permits are secured by the City) and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work. Contractor shall be responsible for preparing working drawings and shall submit them to the City for approval prior to commencement of work. For purposes of this Contract, working drawings shall mean, shop drawings, shop plans, erection plans, false-work plans, framework plans, cofferdam, cribbing and shoring plans, or any other supplementary plans or similar data, including a schedule of submittal dates for working drawings where specified, which Contractor will rely on for purposes of conducting the work for the Project.

- (8) Contractor Clean-Up. Prior to physical completion, all debris resulting from Contractor's work, delivery or installation of equipment shall be disposed of entirely by Contractor in an efficient and expeditious manner as required and directed by the City.
- (9) Safety. Contractor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations with regard to the prosecution of the work. Contractor agrees to furnish Material Safety Data Sheets (Form OSHA-20) applicable for hazardous or potentially hazardous products. Contractor agrees to comply with the conditions of the Washington Industrial Safety and Health Act of 1970, and standards and regulations issued thereunder, and certify that all items furnished and purchased will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless the City from damages assessed against the City because of Contractor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

B. *Work Performance.*

- (1) Prevailing wages. Contractor shall pay prevailing wages, as that term is defined under the laws of the State of Washington, for all work performed on this Project by Contractor and by Contractor's employees, agents and subcontractors. Contractor is fully responsible for prevailing wage compliance.

*For reference only, and without relieving any Contractor responsibility, the City notes the State of Washington prevailing wage rates for public works projects located in King County may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the bid submittal deadline for this Project, the applicable effective date for prevailing wages for this Project is April 5<sup>th</sup>, 2024. A copy of prevailing wage rates is also available for viewing at the office of the City (or via e-mail if City offices are closed), located at 24301 Roberts Drive, Black Diamond, WA 98010. Upon request, the City will mail a hard copy of the applicable prevailing wages for this Project if City offices are open, otherwise they will be provided via e-mail.*

- (2) Notice to City. Minimum 24-hours prior notice shall be given to the City's Department of Public Works prior to commencement of work under this Contract.
- (3) Approved Plans & Specifications to be followed. All work is to be performed to the City's satisfaction and in compliance with the Contract Documents listed in section 6.A(3) above, unless such requirements or specifications are expressly amended in writing by the City.
- (4) Schedule of Work to be followed. All **in-water** work for the project shall be completed by April 30, 2024. Contractor shall diligently proceed with the work and shall assure that it, and its subcontractors, have adequate staffing at all times in order for Contractor to comply with any Schedule of Work agreed to by the Parties, and shall make all reasonable efforts to complete the work in a timely manner.
- (5) Duty to Correct. Contractor shall promptly correct work rejected by the City as failing to conform to the requirements of the Contract. The Contractor shall bear the cost of correcting such rejected work. If the Contractor fails to correct nonconforming work within a reasonable time, the City may correct it and Contractor shall reimburse the City for the cost of the correction.
- (6) Project Administration/Notice to Proceed. The Public Works Director, or his or her designee, shall administer this Contract and shall have all authority provided for the City under this Contract including all project approvals, including change orders. Contractor shall not commence work until Notice to Proceed has been given by the City. All work performed under this Contract will be monitored and inspected by the Public Works Director or his or her designee, and accepted by same.

C. *Non-Discrimination.*

- (1) Contractor, Contractor's officers and employees, and its subcontractors and agents, shall not discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other condition prohibited by federal, state, or local law or ordinance, except where the condition constitutes a bona fide occupational qualification under law.
- (2) Any violation of this Section shall be a material breach of this Contract and grounds for immediate cancellation, termination, or suspension of the Contract by the City, in whole or in part, and may result in Contractor being ineligible to perform further work for the City.

7. **Compensation.** Compensation shall be by Lump Sum for the entire scope of work as defined in the attached Bid Form/Scope of Work at the bid amounts.

Compensation for services requested by the City beyond the defined Scope of Work shall be by the unit prices according to the bid or by change order.

Rule 170 (WAC 458-20-170) and its related rules apply to this project. Contractor shall not include sales tax in the unit prices bid with the following exception. The Contracting

Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

**8. Payment**

- A. Contractor shall request approval and acceptance of the entire scope of work from the City. Contractor may not bill for the completed work until the City has accepted the completed work.
- B. All invoices shall be submitted for work after it has been performed, and paid by City warrant within thirty (30) days of receipt of a proper invoice.
- C. Failure to perform any of the obligations under the Contract by Contractor may be decreed by the City to be adequate reason for withholding any payments until compliance is achieved. Progress payments for work performed shall not be evidence of acceptable performance or an admission by the City that any work has been satisfactorily completed.
- D. Payments received on account of work performed by a subcontractor are subject to the provisions of RCW 39.04.250.

**9. Performance Bond.** Contractor shall provide a performance and payment bond to the City prior to commencement of work for 100% of the bid amount guaranteeing the full and faithful performance by Contractor of the terms and conditions of this Contract.

Initial: \_\_\_\_\_ (Contractor)

In lieu of a performance and payment bond, the Contractor may request, in writing, that the City retain an additional 10% of the contract amount, on top of required retainage in item 10 below, until 30 days after the date of final acceptance, or until the receipt of all necessary releases from the Department of Revenue, Department of Employment Security, and Department of Labor and Industries, whichever is later and as determined by Revised Code of Washington (RCW) 39.08.010(3).

- A. If the project qualifies under RCW 39.08.010(3) and Contractor chooses to withhold extra retainage, the Contractor will still be required to provide a Maintenance Bond for a period of two years upon notification of physical completion from the Contracting Agency. The project will not be accepted until a Maintenance Bond is provided by the contractor.

**10. Retainage.** Pursuant to Chapter 60.28 RCW, a sum of five percent (5%) of the monies earned by Contractor will be retained from progress payments. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82, and (2) the claims of any person arising under the



Contract. No final payment or release of any retainage will be made until Contractor and each subcontractor has submitted an "Affidavit of Wages Paid" (LI 700-7 or other approved form) that has been certified by the industrial statistician of the Department of Labor and Industries. Also the retainage will not be released until the City has received certification that the Department of Revenue has received due payment of applicable taxes. Once the City has received certification from appropriate departments of the state of Washington, 45 days has passed from the date of acceptance of the Project and the City has not received any claims against the Project, then the City will release the retainage.

11. **Changes.** After execution of the Contract, changes in the Project may be accomplished by change order. The City, without invalidating the Contract, may order changes in the Project within the general scope of the Contract consisting of additions, deletions or other revisions, the contract sum and Contract completion date being adjusted accordingly. Change orders shall be in writing signed by the Parties.
12. **Termination of Contract.** This Contract may be terminated by the City at any time upon the default of the Contractor or upon public convenience, in which Contractor shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination. Contractor shall not be entitled to any reallocation of cost, profit or overhead. Contractor shall not in any event be entitled to anticipated profit on work not performed because of such termination. Contractor shall use its best efforts to minimize the compensation payable under this Contract in the event of such termination. If the contract is terminated for default, Contractor shall not be entitled to receive any further payments under the Contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to Contractor. Contractor shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.
13. **Responsibility Criteria and Verification by Contractor.** Pursuant to Chapter 39.04 RCW, the following requirements are part of this Contract:
  - A. *Responsibility Criteria.*
    - (1) Eligibility to be awarded contract. Contractor hereby certifies that Contractor meets the following responsibility criteria:
      - a. Contractor has a certificate of registration in compliance with chapter 18.27 RCW;
      - b. Contractor has a current state unified business identifier number;
      - c. If applicable, Contractor has industrial insurance coverage for Contractor's employees working in Washington as required under Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW; and

- d. Contractor is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

B. *Requirement to verify subcontractors.* Contractor verifies the responsibility criteria contained above for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors and that each subcontractor verify the responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement must be included in every subcontract of every tier.

#### 14. Insurance.

- A. All employees, subcontractors, agents to be covered. Contractor shall procure and maintain for the duration of the Contract, and shall provide proof satisfactory to the City, insurance that covers Contractor and each of Contractor's employees, subcontractors or agents (who are not otherwise covered by Contractor's insurance) against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its employees, subcontractors or agents.
- B. Lack of insurance grounds for termination of contract. Failure of Contractor to maintain insurance as required herein shall be grounds for immediate termination of this Contract by the City.
- C. Title 51 Industrial Insurance Waived. The Parties have specifically negotiated as a term of this Contract that Contractor has agreed to expressly waive immunity under Title 51 RCW, Industrial Insurance Law.
- D. Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below and maintain such insurance for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives or employees as follows
  - 1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. The policy shall provide contractual liability coverage.
  - 2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed

Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Builders Risk [when applicable] insurance covering interests of the City, Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire, flood, earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

E. Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Builders Risk insurance shall be written in the amount of the completed value of the Project with no coinsurance provisions.

4. Employer's liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – policy limit \$1,000,000.

E. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, Employer's Liability and Builders Risk insurance:

1. Contractor's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

2. Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

3. Contractor, at the City's request, shall provide to the City a complete copy of requested policy(ies) and not just certificates.

4. The City will not waive its right to subrogation against the Contractor. The Contractor's insurance shall be endorsed acknowledging that the City will not waive its right to subrogation. The Contractor's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.

- F. Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of all amendatory endorsements, naming the City as additional named insured, including but not necessarily limited to the additional insured endorsements evidencing the Automobile Liability and Commercial General Liability insurance of Contractor before commencement of the work. Before any exposure to loss may occur, Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.
- G. Subcontractors. Contractor shall ensure that each subcontractor of every tier obtains at a minimum the same insurance coverage and limits as stated herein for Contractor (with the exception of Builders Risk insurance). Upon request of the City, Contractor shall provide evidence of such insurance.
- H. Contractor's Other Losses. Whether insured or not, Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, vehicles, equipment or other personal property; and Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Contractor, or Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

## **15. Claims for damages.**

- A. Excluded situations. The City shall not be responsible for delays caused by soil conditions; underground obstructions; labor disputes; fire; delays by third parties, including public and private utilities; or reasonably foreseeable delays.
- B. Liability limited to direct costs. Contractor agrees that the City's liability to Contractor for payment of claims or damages of any kind whatsoever related to this Contract shall be limited to direct costs as provided under the force account provisions of applicable standard specifications. Contractor expressly waives all claims for payment of damages that include or are computed on total costs of job performance, extended overhead, or other similar methods that are not specific as to the actual, direct costs of contract work as defined in the force account provisions of applicable standard specifications.
- C. "Damages" defined. For purposes of applying RCW 4.24.115 to this Contract, Contractor and the City agree that the term "damages" applies only to a finding in a judicial proceeding and is exclusive of third party claims for damage primarily thereto.

- D. **Indemnification.** The following provision shall control over any other indemnification provision in the Contract Documents. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further agreed that claims for damages against the City for which Contractor's insurance carrier does not accept defense of the City may be tendered by the City to Contractor, who shall then accept and settle with the claimant or defend the claim. The City retains the right to approve claims investigation and counsel assigned to said claims, and all investigation of legal work product regarding said claims shall be performed under a fiduciary relationship to the City.

It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract.

**16. Assigning or Subcontracting.** Contractor shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Contract without the express prior written consent of the City.

**17. Independent Contractor.** Contractor is and shall be at all times during the term of this Contract an independent contractor.

**18. Disputes.** Any action for claims arising out of or relating to this Contract shall be governed by the laws of the State of Washington. Venue shall be in King County Superior Court.

**19. Attorneys Fees.** In any suit or action instituted to enforce any right granted in this Contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorneys fees from the other party.

**20. Extent of Contract/Modification.** This Contract, together with attachments or addenda, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified or added to only by written instrument properly signed by both parties. Should any language in any of the Exhibits or Contract Documents conflict with language contained in this Contract, the provisions of this Contract shall prevail.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

BY ITS SIGNATURE BELOW, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREES TO BE BOUND BY THEM.

**CITY OF BLACK DIAMOND**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

Attachments

## CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_ (*Corporate Officer (Not Contract Signer)*) certify that I am the \_\_\_\_\_ (*Corporate Title*) of the corporation named as Contractor in the Contract attached hereto; that \_\_\_\_\_, (*Contract Signer*) who signed said Contract on behalf of Contractor, was then \_\_\_\_\_ (*Corporate Title*) of said corporation; that said Contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
Corp. officer signature (not contract signer)

\_\_\_\_\_  
Printed

\_\_\_\_\_  
Title

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, (*corporate officer (not contract signer)*) being duly sworn, deposes and says that he/she is \_\_\_\_\_ (*Corporate Title*) of \_\_\_\_\_ (*Name of Corporation*)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public (Signature)

\_\_\_\_\_  
Notary Public (Print)  
My commission expires \_\_\_\_\_

**DECLARATION OF OPTION FOR MANAGEMENT  
OF STATUTORY RETAINED PERCENTAGE**

*Note: This form must be submitted at the time Contractor executes the contract. Contractor shall designate the option desired by checking the appropriate space.*

Monies reserved under provisions of RCW 60.28, at the option of Contractor, shall be:

\_\_\_\_\_ (1) Retained in a fund by the City.

\_\_\_\_\_ (2) Deposited by the City in an interest-bearing account in a bank, mutual savings bank or savings and loan association.

\_\_\_\_\_ (3) Placed in escrow with a bank or trust company by the City. When the monies reserved are to be placed in escrow, the City will issue a check representing the sum of the monies reserved payable to the bank or trust company and Contractor jointly. Such check shall be converted into bonds and securities chosen by Contractor and approved by the City and the bonds and securities held in escrow. Contractor in choosing option (2) or (3) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

\_\_\_\_\_  
*Contractor Signature*

\_\_\_\_\_  
*Date*



**CITY OF BLACK DIAMOND  
PERFORMANCE BOND**

Surety Bond #: \_\_\_\_\_  
DATE POSTED: \_\_\_\_\_  
PROJECT COMPLETION DATE: \_\_\_\_\_

RE: Subdivision/Plat/Name: \_\_\_\_\_  
Owner/Developer/Contractor: \_\_\_\_\_  
Project Address: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS: That we, \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called the "Principal"), and \_\_\_\_\_  
a corporation organized under the laws of the State of \_\_\_\_\_, and authorized  
to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and  
firmly bound unto the City of Black Diamond, Washington, in the sum of \_\_\_\_\_  
(\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which sum  
we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly  
and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has entered into a certain agreement with the City, or  
has been granted approval by the City, for \_\_\_\_\_, within the  
City;

WHEREAS, the agreement or the approval granted by the City requires that certain  
improvements be made in connection with construction of the project; and that such improvements  
be constructed in full compliance with City standards, and the plans and specifications submitted with  
the project, as required by the City; and

WHEREAS, the agreement or the approval granted by the City requires that the improvements  
are to be made or constructed within a certain period of time, unless an extension is granted in writing  
by the City; and

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect  
until released in writing by the City of Black Diamond, but only after the Principal has performed and  
satisfied the following conditions:

A. Conditions.

1. The improvements to be constructed by the Principal include: (insert complete  
description here)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The Principal must construct the improvements to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the City in the above-referenced City file. In addition, the Principal must construct the improvements according to the applicable ordinances and standards of the City and/or state statutes, as the same now exist or are hereafter amended.
3. The Principal must have completed all improvements required by the above-referenced conditions, plans and City file within \_\_\_\_\_ which time period shall begin to run from the earlier of \_\_\_\_\_ unless an extension is granted by the City.
4. The Principal must have paid all sums owing to laborers, contractors, mechanics, subcontractors, materialmen and suppliers or others as a result of such work for which a lien against any City property has arisen or may arise.
5. The Principal must obtain acceptance by the City of the work completed, all on or before thirty (30) days after the completion date set forth in paragraph 3 above.

B. Default.

1. If the Principal defaults and does not perform the above conditions within the time specified, then the Surety shall, within twenty (20) days of demand of the City, make a written commitment to the City that it will either:
  - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
  - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs, which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to complete all of the above referenced improvements within the time period specified by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of completing the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to complete such improvements.

C. Corrections. Any corrections required by the City shall be commenced within seven (7) days of notification by the City and completed within thirty (30) days of the date of notification. If

the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section B above.

- D. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.
- E. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.
- F. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and a bond guaranteeing maintenance of all improvements for a period of twenty-four (24) months from acceptance has been submitted to the City in an amount to be determined by the City Engineer, in a form suitable to the City and until released in writing by the City.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SURETY COMPANY  
(Signature must be notarized)

DEVELOPER/OWNER  
(Signature must be notarized)

By: \_\_\_\_\_  
Its \_\_\_\_\_

By: \_\_\_\_\_  
Its \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

CITY OF BLACK DIAMOND

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

The City of Black Diamond  
24301 Roberts Drive  
P.O. Box 599  
Black Diamond, WA 98010

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

\_\_\_\_\_ Individual (Form P-1)  
\_\_\_\_\_ Corporation (Form P-2)

**FORM P-1 / NOTARY BLOCK**

(Use For Individual/Sole Proprietor Only)

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF                                    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**FORM P-2 / NOTARY BLOCK - (Use For Partnership or Corporation Only)**

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF                                    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged as the \_\_\_\_\_ of \_\_\_\_\_ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(print or type name)

NOTARY PUBLIC in and for the State of  
Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**(For Surety Company)**

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF                                    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged as the \_\_\_\_\_ of \_\_\_\_\_ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**CITY OF BLACK DIAMOND  
MAINTENANCE BOND**

Surety Bond #: \_\_\_\_\_  
Date Posted: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

RE: Project Name: \_\_\_\_\_  
Owner/Developer/Contractor: \_\_\_\_\_  
Project Address: \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS: That we, \_\_\_\_\_  
(hereinafter called the "Principal"), and \_\_\_\_\_, a corporation organized under  
the laws of the State of \_\_\_\_\_, and authorized to transact surety business in  
the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City of  
Black Diamond, Washington, in the sum of \_\_\_\_\_  
dollars (\$ \_\_\_\_\_), lawful money of the United States of  
America, for the payment of which sum we and each of us bind ourselves, our heirs, executors,  
administrators, successors and assigns, jointly and severally, by these presents. THE CONDITIONS  
of the above obligation are such that:

WHEREAS, the above named Principal has constructed and installed certain improvements  
on public property in connection with a project as described above within the City of Black Diamond;  
and

WHEREAS, in accordance with BMC \_\_\_\_\_, as a condition of approval, or as a condition  
of a contract with the City, the Principal is required to post a bond for the 24 months following project  
completion in order to ensure that the project does not contain defects that require repair and to cover  
the cost of repair during that 24-month period; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or  
replace said improvements against defects in workmanship, materials or installation for a period of  
twenty-four (24) months after written and final acceptance of the same and approval by the City;

NOW, THEREFORE, this Maintenance Bond has been secured and is hereby submitted to  
the City. It is understood and agreed that this obligation shall continue in effect until released in  
writing by the City, but only after the Principal has performed and satisfied the following conditions:

A. The work or improvements installed by the Principal and subject to the terms and conditions  
of this Bond are as follows: (insert complete description of work here)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. The Principal and Surety agree that the work and improvements installed in the above-  
referenced project shall remain free from defects in material, workmanship and installation (or, in the

case of landscaping, shall survive,) for a period of twenty-four (24) months after written and final acceptance of the same and approval by the City. Maintenance is defined as acts carried out to prevent a decline, lapse or cessation of the state of the project or improvements as accepted by the City during the twenty-four (24) month period after final and written acceptance, and includes, but is not limited to, repair or replacement of defective workmanship, materials or installations.

C. The Principal shall, at its sole cost and expense, carefully replace and/or repair any damage or defects in workmanship, materials or installation to the City-owned real property on which improvements have been installed, and leave the same in as good condition as it was before commencement of the work.

D. The Principal and the Surety agree that in the event any of the improvements or restoration work installed or completed by the Principal as described herein, fail to remain free from defects in materials, workmanship or installation (or in the case of landscaping, fail to survive), for a period of twenty-four (24) months from the date of acceptance of the work by the City, the Principal shall repair and/replace the same within ten (10) days of demand by the City, and if the Principal should fail to do so, then the Surety shall:

1. Within twenty (20) days of demand of the City, make written commitment to the City that it will either:
  - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or
  - b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection D(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs which exceeded the City's estimate, limited to the bond amount.

2. In the event the Principal fails to make repairs or provide maintenance within the time period requested by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of repairing or maintaining the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to repair or maintain such improvements.

E. Corrections. Any corrections required by the City shall be commenced within ten (10) days of notification by the City and completed within thirty (30) days of the date of notification. If



the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this bond as described in Section D above.

- F. Extensions and Changes. No change, extension of time, alteration or addition to the work to be performed by the Principal shall affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The surety waives notice of any such change, extension, alteration or addition thereunder.
- G. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.
- H. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and until released in writing by the City at the request of the Surety or Principal.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SURETY COMPANY  
(Signature must be notarized)

OWNER  
(Signature must be notarized)

By: \_\_\_\_\_  
Its \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

CITY OF BLACK DIAMOND

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

City of Black Diamond  
24301 Roberts Drive  
P.O. Box 599  
Black Diamond, WA 98010

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE

- \_\_\_\_\_ Individual (Form P-1)
- \_\_\_\_\_ Corporation (Form P-2)
- \_\_\_\_\_ Surety Company (Form P-2)

**FORM P-1 / NOTARY BLOCK**  
(Use For Individual/Sole Proprietor Only)

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF PIERCE                    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**FORM P-2 / NOTARY BLOCK (Use For Partnership or Corporation Only)**

**(Developer/Owner)**

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF                                    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged as the \_\_\_\_\_ of \_\_\_\_\_ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(print or type name)

NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

**(Surety Company)**

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF                                    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged as the \_\_\_\_\_ of \_\_\_\_\_ that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(print or type name)

NOTARY PUBLIC in and for the  
State of Washington, residing  
at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

# **Division 1**

## **General Conditions**

## **DIVISION 1 - GENERAL CONDITIONS**

### **INTRODUCTION TO THE SPECIAL PROVISIONS**

(\*\*\*\*\*)

The work on this project shall be accomplished in accordance with the Standard Specifications for Road, Bridge and Municipal Construction, 2024 edition, as issued by the Washington State Department of Transportation (WSDOT) and the American Public Works Association (APWA), Washington State Chapter (hereafter "Standard Specifications"). The Standard Specifications, as modified or supplemented by these Special Provisions, all of which are made a part of the Contract Documents, shall govern all of the Work.

These Special Provisions are made up of both General Special Provisions (GSPs) from various sources, which may have project-specific fill-ins; and project-specific Special Provisions. Each Provision either supplements, modifies, or replaces the comparable Standard Specification, or is a new Provision. The deletion, amendment, alteration, or addition to any subsection or portion of the Standard Specifications is meant to pertain only to that particular portion of the section, and in no way should it be interpreted that the balance of the section does not apply.

The GSPs are labeled under the headers of each GSP, with the effective date of the GSP and its source. For example:

(March 8, 2013 APWA GSP)  
(April 1, 2013 WSDOT GSP)

Project specific special provisions are labeled without a date as such:

(\*\*\*\*\*)

Also incorporated into the Contract Documents by reference are the following documents, regulations, and/or requirements, which shall supersede any conflicting provisions of the Standard Specifications and are made a part of this contract; provided, however, that if any of the following documents, regulations and or requirements are less restrictive than Washington State Law, then the Washington State Law shall prevail.

- City of Black Diamond Engineering Design and Construction Standards
- Manual on Uniform Traffic Control Devices for Streets and Highways, currently adopted edition, with Washington State modifications, if any
- Standard Plans for Road, Bridge, and Municipal Construction, WSDOT/APWA, current edition

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## DIVISION 1

### GENERAL REQUIREMENTS

#### DESCRIPTION OF WORK

*(March 13, 1995 WSDOT GSP)*

This Contract provides for the construction of the Lake Sawyer Dock Project, and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.

#### 1-01 DEFINITIONS AND TERMS

##### 1-01.3 Definitions

*(\*\*\*\*\*)*

Delete the heading **Completion Dates** and the three paragraphs that follow it, and replace them with the following:

#### **Dates**

##### ***Bid Opening Date***

The date on which the Contracting Agency opens the Bids.

##### ***Award Date***

The date of the formal decision of the Contracting Agency to accept the lowest responsible and responsive Bidder for the Work.

##### ***Contract Execution Date***

The date the Contracting Agency officially binds the Agency to the Contract.

##### ***Notice to Proceed Date***

The date stated in the Notice to Proceed on which the Contract time begins.

##### ***Substantial Completion Date***

The day the Engineer determines the Contracting Agency has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, any remaining traffic disruptions will be rare and brief, and only minor incidental work, replacement of temporary substitute facilities, plant establishment periods, or correction or repair remains for the Physical Completion of the total Contract.

##### ***Physical Completion Date***

The day all of the Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date.

##### ***Completion Date***

The day all the Work specified in the Contract is completed and all the obligations of the Contractor under the contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor before establishment of this date.

##### ***Final Acceptance Date***

The date on which the Contracting Agency accepts the Work as complete.



Supplement this Section with the following:

All references in the Standard Specifications or WSDOT General Special Provisions, to the terms “Department of Transportation”, “Washington State Transportation Commission”, “Commission”, “Secretary of Transportation”, “Secretary”, “Headquarters”, and “State Treasurer” shall be revised to read “Contracting Agency”.

All references to the terms “State” or “state” shall be revised to read “Contracting Agency” unless the reference is to an administrative agency of the State of Washington, a State statute or regulation, or the context reasonably indicates otherwise.

All references to “State Materials Laboratory” shall be revised to read “Contracting Agency designated location”.

All references to “final contract voucher certification” shall be interpreted to mean the Contracting Agency form(s) by which final payment is authorized, and final completion and acceptance granted.

**Additive**

A supplemental unit of work or group of bid items, identified separately in the Bid Proposal, which may, at the discretion of the Contracting Agency, be awarded in addition to the base bid.

**Alternate**

One of two or more units of work or groups of bid items, identified separately in the Bid Proposal, from which the Contracting Agency may make a choice between different methods or material of construction for performing the same work.

**Business Day**

A business day is any day from Monday through Friday except holidays as listed in Section 1-08.5.

**Contract Bond**

The definition in the Standard Specifications for “Contract Bond” applies to whatever bond form(s) are required by the Contract Documents, which may be a combination of a Payment Bond and a Performance Bond.

**Contract Documents**

See definition for “Contract”.

**Contract Time**

The period of time established by the terms and conditions of the Contract within which the Work must be physically completed.

**Notice of Award**

The written notice from the Contracting Agency to the successful Bidder signifying the Contracting Agency’s acceptance of the Bid Proposal.

**Notice to Proceed**

The written notice from the Contracting Agency or Engineer to the Contractor authorizing and directing the Contractor to proceed with the Work and establishing the date on which the Contract time begins.

**Traffic**

Both vehicular and non-vehicular traffic, such as pedestrians, bicyclists, wheelchairs, and equestrian traffic.

**1-02 BID PROCEDURES AND CONDITIONS****1-02.1 Prequalification of Bidders**

Delete this section and replace it with the following:

**1-02.1 Qualifications of Bidder**  
*(January 24, 2011 APWA GSP)*

Before award of a public works contract, a bidder must meet at least the minimum qualifications of RCW 39.04.350(1) to be considered a responsible bidder and qualified to be awarded a public works project. (NOTE: RCW 39.04.350(1) now includes a training element effective July 1, 2019)

**1-02.2 Plans and Specifications**  
*(June 27, 2011 APWA GSP)*

Delete this section and replace it with the following:

Information as to where Bid Documents can be obtained or reviewed can be found in the Call for Bids (Advertisement for Bids) for the work.

After award of the contract, plans and specifications will be issued to the Contractor at no cost as detailed below:

<b>To Prime Contractor</b>	<b>No. of Sets</b>	<b>Basis of Distribution</b>
Contract Provisions	2	Furnished automatically upon award.
Large plans (e.g., 22" x 34")	0	Not Available.

Additional plans and Contract Provisions may be obtained by the Contractor from the source stated in the Call for Bids, at the Contractor's own expense.

**1-02.5 Proposal Forms**  
(July 31, 2017 APWA GSP)

Delete this section and replace it with the following:

The Proposal Form will identify the project and its location and describe the work. It will also list estimated quantities, units of measurement, the items of work, and the materials to be furnished at the unit bid prices. The bidder shall complete spaces on the proposal form that call for, but are not limited to, unit prices; extensions; summations; the total bid amount; signatures; date; and, where applicable, retail sales taxes and acknowledgment of addenda; the bidder's name, address, telephone number, and signature; the bidder's UDBE/DBE/M/WBE commitment, if applicable; a State of Washington Contractor's Registration Number; and a Business License Number, if applicable. Bids shall be completed by typing or shall be printed in ink by hand, preferably in black ink. The required certifications are included as part of the Proposal Form.

The Contracting Agency reserves the right to arrange the proposal forms with alternates and additives, if such be to the advantage of the Contracting Agency. The bidder shall bid on all alternates and additives set forth in the Proposal Form unless otherwise specified.

**1-02.9 Delivery of Proposal**  
(\*\*\*\*\*)

Delete this section and replace it with the following:

Each Proposal shall be submitted as described in the Request for Bids.

**1-02.12 Public Opening of Proposals**  
(\*\*\*\*\*)

Delete this section and replace it with the following:

Proposals will not be opened and publicly read at the time indicated in the Call for Bids. Bid tabulations will be made available to all bidders and to the public.

**1-02.13 Irregular Proposals**  
(January 4, 2024 APWA GSP)

Delete this section and replace it with the following:

1. A Proposal will be considered irregular and will be rejected if:
  - a. The Bidder is not prequalified when so required;
  - b. The Bidder adds provisions reserving the right to reject or accept the Award, or enter into the Contract;
  - c. A price per unit cannot be determined from the Bid Proposal;
  - d. The Proposal form is not properly executed;

- e. The Bidder fails to submit or properly complete a subcontractor list (WSDOT Form 271-015), if applicable, as required in Section 1-02.6;
  - f. The Bidder fails to submit or properly complete a Disadvantaged Business Enterprise Certification (WSDOT Form 272-056), if applicable, as required in Section 1-02.6;
  - g. The Bidder fails to submit Written Confirmations (WSDOT Form 422-031) from each DBE firm listed on the Bidder's completed DBE Utilization Certification that they are in agreement with the bidder's DBE participation commitment, if applicable, as required in Section 1-02.6, or if the written confirmation that is submitted fails to meet the requirements of the Special Provisions;
  - h. The Bidder fails to submit DBE Good Faith Effort documentation, if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to demonstrate that a Good Faith Effort to meet the Condition of Award in accordance with Section 1-07.11;
  - i. The Bidder fails to submit a DBE Bid Item Breakdown (WSDOT Form 272-054), if applicable, as required in Section 1-02.6, or if the documentation that is submitted fails to meet the requirements of the Special Provisions;
  - j. The Bid Proposal does not constitute a definite and unqualified offer to meet the material terms of the Bid invitation.
2. A Proposal may be considered irregular and may be rejected if:
- a. The Proposal does not include a unit price for every Bid item;
  - b. Any of the unit prices are excessively unbalanced (either above or below the amount of a reasonable Bid) to the potential detriment of the Contracting Agency;
  - c. The authorized Proposal Form furnished by the Contracting Agency is not used or is altered;
  - d. The completed Proposal form contains unauthorized additions, deletions, alternate Bids, or conditions;
  - e. Receipt of Addenda is not acknowledged;
  - f. A member of a joint venture or partnership and the joint venture or partnership submit Proposals for the same project (in such an instance, both Bids may be rejected); or
  - g. If Proposal form entries are not made in ink.

**1-02.15**                    **Pre-Award Information**  
(\*\*\*\*\*)

Revise this section to read:

Before awarding any contract, the Contracting Agency may require one or more of these items or actions of the apparent lowest responsible bidder:

1. A complete statement of the origin, composition, and manufacture of any or all materials to be used,
2. Manufacturer specifications of the proposed products or materials for quality and fitness tests,
3. A progress schedule (in a form the Contracting Agency requires) showing the order of and time required for the various phases of the work,
4. Obtain, and furnish a copy of, a business license to do business in the city or county where the work is located.
5. Provide 3 past projects of similar scope including references and contact information (email address and phone number).

**1-03**                    **AWARD AND EXECUTION OF CONTRACT**

**1-03.4**                    **Contract Bond**  
(July 23, 2015 APWA GSP)

Delete the first paragraph and replace it with the following:

The successful bidder shall provide executed payment and performance bond(s) for the full contract amount. The bond may be a combined payment and performance bond; or be separate payment and performance bonds. In the case of separate payment and performance bonds, each shall be for the full contract amount. The bond(s) shall:

1. Be on Contracting Agency-furnished form(s);
2. Be signed by an approved surety (or sureties) that:
  - a. Is registered with the Washington State Insurance Commissioner, and
  - b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
3. Guarantee that the Contractor will perform and comply with all obligations, duties, and conditions under the Contract, including but not limited to the duty and obligation to

indemnify, defend, and protect the Contracting Agency against all losses and claims related directly or indirectly from any failure:

- a. Of the Contractor (or any of the employees, subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform and comply with all contract obligations, conditions, and duties, or
  - b. Of the Contractor (or the subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material person, or any other person who provides supplies or provisions for carrying out the work;
4. Be conditioned upon the payment of taxes, increases, and penalties incurred on the project under titles 50, 51, and 82 RCW; and
  5. Be accompanied by a power of attorney for the Surety's officer empowered to sign the bond; and
  6. Be signed by an officer of the Contractor empowered to sign official statements (sole proprietor or partner). If the Contractor is a corporation, the bond(s) must be signed by the president or vice president, unless accompanied by written proof of the authority of the individual signing the bond(s) to bind the corporation (i.e., corporate resolution, power of attorney, or a letter to such effect signed by the president or vice president).

Section 1-03.4 is supplemented with the following:

In lieu of a performance and payment bond, the Contractor may request, in writing, that the City retain an additional 10% of the contract amount, on top of required retainage in item 10 below, until 30 days after the date of final acceptance, or until the receipt of all necessary releases from the Department of Revenue, Department of Employment Security, and Department of Labor and Industries, whichever is later and as determined by Revised Code of Washington (RCW) 39.08.010(3).

- If Contractor chooses to withhold extra retainage, the Contractor will still be required to provide a Maintenance Bond for a period of two years upon notification of physical completion from the Contracting Agency. The project will not be accepted until a Maintenance Bond is provided by the contractor.

#### **1-03.7 Judicial Review** (December 30, 2022 APWA GSP)

Revise this section to read:

All decisions made by the Contracting Agency regarding the Award and execution of the Contract or Bid rejection shall be conclusive subject to the scope of judicial review permitted under Washington Law. Such review, if any, shall be timely filed in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction.

## **1-04 SCOPE OF THE WORK**

### **1-04.2 Coordination of Contract Documents, Plans, Special Provisions, Specifications, and Addenda**

*(December 30, 2022 APWA GSP)*

Revise the second paragraph to read:

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Standard Specifications,
6. Contracting Agency's Standard Plans or Details (if any), and
7. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

## **1-05 CONTROL OF WORK**

### **1-05.7 Removal of Defective and Unauthorized Work**

*(October 1, 2005 APWA GSP)*

Supplement this section with the following:

If the Contractor fails to remedy defective or unauthorized work within the time specified in a written notice from the Engineer, or fails to perform any part of the work required by the Contract Documents, the Engineer may correct and remedy such work as may be identified in the written notice, with Contracting Agency forces or by such other means as the Contracting Agency may deem necessary.

If the Contractor fails to comply with a written order to remedy what the Engineer determines to be an emergency situation, the Engineer may have the defective and unauthorized work corrected immediately, have the rejected work removed and replaced, or have work the Contractor refuses to perform completed by using Contracting Agency or other forces. An emergency situation is any situation when, in the opinion of the Engineer, a delay in its remedy could be potentially unsafe, or might cause serious risk of loss or damage to the public.

Direct or indirect costs incurred by the Contracting Agency attributable to correcting and remedying defective or unauthorized work, or work the Contractor failed or refused to perform, shall be paid by the Contractor. Payment will be deducted by the Engineer from monies due, or to become due, the Contractor. Such direct and indirect costs shall include in

particular, but without limitation, compensation for additional professional services required, and costs for repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the Contractor's unauthorized work.

No adjustment in contract time or compensation will be allowed because of the delay in the performance of the work attributable to the exercise of the Contracting Agency's rights provided by this Section.

The rights exercised under the provisions of this section shall not diminish the Contracting Agency's right to pursue any other avenue for additional remedy or damages with respect to the Contractor's failure to perform the work as required.

#### **1-05.11 Final Inspection**

Delete this section and replace it with the following:

#### **1-05.11 Final Inspections and Operational Testing**

##### **1-05.11(1) Substantial Completion Date**

When the Contractor considers the work to be substantially complete, the Contractor shall so notify the Engineer and request the Engineer establish the Substantial Completion Date. The Contractor's request shall list the specific items of work that remain to be completed in order to reach physical completion. The Engineer will schedule an inspection of the work with the Contractor to determine the status of completion. The Engineer may also establish the Substantial Completion Date unilaterally.

If, after this inspection, the Engineer concurs with the Contractor that the work is substantially complete and ready for its intended use, the Engineer, by written notice to the Contractor, will set the Substantial Completion Date. If, after this inspection the Engineer does not consider the work substantially complete and ready for its intended use, the Engineer will, by written notice, so notify the Contractor giving the reasons therefor.

Upon receipt of written notice concurring in or denying substantial completion, whichever is applicable, the Contractor shall pursue vigorously, diligently and without unauthorized interruption, the work necessary to reach Substantial and Physical Completion. The Contractor shall provide the Engineer with a revised schedule indicating when the Contractor expects to reach substantial and physical completion of the work.

The above process shall be repeated until the Engineer establishes the Substantial Completion Date and the Contractor considers the work physically complete and ready for final inspection.

##### **1-05.11(2) Final Inspection and Physical Completion Date**

When the Contractor considers the work physically complete and ready for final inspection, the Contractor by written notice, shall request the Engineer to schedule a final inspection. The Engineer will set a date for final inspection. The Engineer and the Contractor will then make a final inspection and the Engineer will notify the Contractor in writing of all particulars in which the final inspection reveals the work incomplete or unacceptable. The Contractor shall



immediately take such corrective measures as are necessary to remedy the listed deficiencies. Corrective work shall be pursued vigorously, diligently, and without interruption until physical completion of the listed deficiencies. This process will continue until the Engineer is satisfied the listed deficiencies have been corrected.

If action to correct the listed deficiencies is not initiated within 7 days after receipt of the written notice listing the deficiencies, the Engineer may, upon written notice to the Contractor, take whatever steps are necessary to correct those deficiencies pursuant to Section 1-05.7.

The Contractor will not be allowed an extension of contract time because of a delay in the performance of the work attributable to the exercise of the Engineer's right hereunder.

Upon correction of all deficiencies, the Engineer will notify the Contractor and the Contracting Agency, in writing, of the date upon which the work was considered physically complete. That date shall constitute the Physical Completion Date of the contract, but shall not imply acceptance of the work or that all the obligations of the Contractor under the contract have been fulfilled.

**1-05.12(1) One-Year Guarantee Period**  
(March 8, 2013 APWA GSP)

The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving Contracting Agency's written notice of a defect, and shall complete such work within the time stated in the Contracting Agency's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the Contracting Agency's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor.

When corrections of defects are made, the Contractor shall then be responsible for correcting all defects in workmanship and materials in the corrected work for one year after acceptance of the corrections by Contracting Agency.

This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or any other legal rights or remedies of the Contracting Agency.

Add the following new section:

(October 1, 2005 APWA GSP)  
**1-05.16 Water and Power**

**New Section**

The Contractor shall make necessary arrangements, and shall bear the costs for power and water necessary for the performance of the work, unless the contract includes power and water as a pay item.

## **1-06 CONTROL OF MATERIAL**

### **1-06.2 Acceptance of Materials**

(\*\*\*\*\*)

This section is supplemented with the following.

All materials and equipment shall be new and shall be as specified in the Contract Documents, or, if not specified, shall be of a quality approved by the Engineer. All materials and equipment furnished are warranted by the Contractor as new and in accordance with the Contract Plans and Contract Specifications, if specified therein, and as suitable for the intended purpose. In addition thereto, the Contractor shall furnish the Owner with copies of the supplier's warranty, and adopt the same as the warranty of the Contractor, and shall also be liable thereon to the Owner.

## **1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC**

### **1-07.1 Laws to be Observed**

*(October 1, 2005 APWA GSP)*

Supplement this section with the following:

In cases of conflict between different safety regulations, the more stringent regulation shall apply.

The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).

The Contractor shall maintain at the project site office, or other well known place at the project site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish, and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the project site. Employees should not be permitted to work on the project site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

The Contractor shall have sole responsibility for the safety, efficiency, and adequacy of the Contractor's plant, appliances, and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the project site, including safety for all persons and property in the performance of the work. This requirement shall apply continuously, and not be limited to normal working hours. The required or implied duty of the Engineer to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the project site.

## **1-07.2 State Taxes**

Delete this section, including its sub-sections, in its entirety and replace it with the following:

### **1-07.2 State Sales Tax** *(June 27, 2011 APWA GSP)*

The Washington State Department of Revenue has issued special rules on the State sales tax. Sections 1-07.2(1) through 1-07.2(3) are meant to clarify those rules. The Contractor should contact the Washington State Department of Revenue for answers to questions in this area. The Contracting Agency will not adjust its payment if the Contractor bases a bid on a misunderstood tax liability.

The Contractor shall include all Contractor-paid taxes in the unit bid prices or other contract amounts. In some cases, however, state retail sales tax will not be included. Section 1-07.2(2) describes this exception.

The Contracting Agency will pay the retained percentage (or release the Contract Bond if a FHWA-funded Project) only if the Contractor has obtained from the Washington State Department of Revenue a certificate showing that all contract-related taxes have been paid (RCW 60.28.051). The Contracting Agency may deduct from its payments to the Contractor any amount the Contractor may owe the Washington State Department of Revenue, whether the amount owed relates to this contract or not. Any amount so deducted will be paid into the proper State fund.

#### **1-07.2(1) State Sales Tax — Rule 171**

WAC 458-20-171, and its related rules, apply to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used primarily for foot or vehicular traffic. This includes storm or combined sewer systems within and included as a part of the street or road drainage system and power lines when such are part of the roadway lighting system. For work performed in such cases, the Contractor shall include Washington State Retail Sales Taxes in the various unit bid item prices, or other contract amounts, including those that the Contractor pays on the purchase of the materials, equipment, or supplies used or consumed in doing the work.

#### **1-07.2(2) State Sales Tax — Rule 170**

WAC 458-20-170, and its related rules, apply to the constructing and repairing of new or existing buildings, or other structures, upon real property. This includes, but is not limited to, the construction of streets, roads, highways, etc., owned by the state of Washington; water mains and their appurtenances; sanitary sewers and sewage disposal systems unless such sewers and disposal systems are within, and a part of, a street or road drainage system; telephone, telegraph, electrical power distribution lines, or other conduits or lines in or above streets or roads, unless such power lines become a part of a street or road lighting system; and installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation.

For work performed in such cases, the Contractor shall collect from the Contracting Agency, retail sales tax on the full contract price. The Contracting Agency will automatically add this sales tax to each payment to the Contractor. For this reason, the Contractor shall not include the retail sales tax in the unit bid item prices, or in any other contract amount subject to Rule 170, with the following exception.

Exception: The Contracting Agency will not add in sales tax for a payment the Contractor or a subcontractor makes on the purchase or rental of tools, machinery, equipment, or consumable supplies not integrated into the project. Such sales taxes shall be included in the unit bid item prices or in any other contract amount.

### **1-07.2(3) Services**

The Contractor shall not collect retail sales tax from the Contracting Agency on any contract wholly for professional or other services (as defined in Washington State Department of Revenue Rules 138 and 244).

## **1-07.5 Environmental Regulations**

### **1-07.5(2) State Department of Fish and Wildlife**

Section 1-07.5(2) is supplemented with the following:

(\*\*\*\*\*)

The City has applied for a Hydraulic Project Approval and the permit will be provided to the Contractor upon approval. The Contractor shall fully comply with all provisions of the permit in the completion of the Work.

*(April 2, 2018 WSDOT GSP, Option 1)*

All costs to comply with this special provision are incidental to the Contract and are the responsibility of the Contractor. The Contractor shall include all related costs in the associated bid prices of the Contract.

## **1-07.23 Public Convenience and Safety**

### **1-07.23(2) Construction and Maintenance of Detours**

This section is supplemented with the following:

#### **Pedestrian Control and Protection**

When the work area encroaches upon a sidewalk, walkway, or crosswalk area, special consideration must be given to pedestrian safety. Maximum effort must be made to separate pedestrians from the work area. Protective barricades, fencing, pathways, and bridges, together with warning and guidance devices and signs, shall be utilized so that the passageway for pedestrians is safe and well defined.

Where walks are closed by construction, an alternate walkway shall be provided.

Where it is necessary to divert pedestrians into the roadway, jersey-style barricades shall be provided to separate the pedestrian walkway from the adjacent vehicular traffic lane. At no time shall pedestrians be diverted into a portion of a street used concurrently by moving vehicular traffic.

At locations where adjacent alternate walkways cannot be provided, appropriate signs shall be posted at the limits of construction and in advance of the closure at the nearest crosswalk or intersection to divert pedestrians across the street.

### **1-07.23(3) Work Zone Clear Zone**

Section 1-07.23(3) is supplemented with the following:

Lane closures are subject to the following restrictions:

Single lane closures are allowed from 9:00 a.m. to 3:00 p.m.

If the Engineer determines the permitted closure hours adversely affect traffic, the Engineer may adjust the hours accordingly. The Engineer will notify the Contractor in writing of any change in the closure hours.

Lane closures are not allowed on any of the following:

1. A holiday,
2. A holiday weekend; holidays that occur on Friday, Saturday, Sunday or Monday are considered a holiday weekend. A holiday weekend includes Saturday, Sunday, and the holiday.
3. After 3:00 p.m. on Friday, the day prior to a holiday or holiday weekend, and
4. Before 9:00 a.m. on the day after the holiday or holiday weekend.

Subject to the time restrictions noted herein, the Contractor may close one lane of traffic during work hours. Alternating one-way traffic shall be maintained on the other lane. Traffic shall be controlled by certified flaggers at all times. If operations of the Contractor are shown to significantly impede traffic flow, the Engineer shall have the authority to restrict the Contractor to a specific time of operation. Two-way traffic shall be maintained at all times during non-working hours.

Access shall be maintained at all times to properties adjoining and surrounding the construction site.

A safe pedestrian access shall be provided at all times through the project area. All lane closures shall be coordinated with the adjacent businesses, other contractors working within the project vicinity, local transit agencies, and approved by the Contracting Agency.

Emergency traffic, such as police, fire, and disaster units, shall be provided access at all times. In addition, the Contractor shall coordinate Contractor activities with all disposal firms and transit bus service that may be operating in the project area.

## **1-08 PROSECUTION AND PROGRESS**

### **1-08.5 Time For Completion**

Section 1-08.5 is supplemented with the following:

This project shall be physically completed within 15 working days.

For the purpose of this contract, a working day is defined as any day (or part of a day) in which any construction activity takes place.

## **1-09 MEASUREMENT AND PAYMENT**

### **1-09.11 Disputes and Claims**

#### **1-09.11(3) Time Limitation and Jurisdiction** *(December 30, 2022 APWA GSP)*

Revise this section to read:

For the convenience of the parties to the Contract it is mutually agreed by the parties that all claims or causes of action which the Contractor has against the Contracting Agency arising from the Contract shall be brought within 180 calendar days from the date of final acceptance (Section 1-05.12) of the Contract by the Contracting Agency; and it is further agreed that all such claims or causes of action shall be brought only in the Superior Court of the county where the Contracting Agency headquarters is located, provided that where an action is asserted against a county, RCW 36.01.050 shall control venue and jurisdiction. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to all such claims or causes of action. It is further mutually agreed by the parties that when claims or causes of action which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency or initiated in court, the Contractor shall permit the Contracting Agency to have timely access to all records deemed necessary by the Contracting Agency to assist in evaluating the claims or action.

## **1-10 TEMPORARY TRAFFIC CONTROL**

### **1-10.1 General**

The first paragraph of Section 1-10.1 is revised as follows:

The Contractor shall provide traffic control plans to the Engineer for review and approval. Plans shall be submitted for review no more than 14 calendar days following award of the contract. Notice to Proceed will not be given until the traffic control plans are approved. Plans shall be in accordance with the MUTCD and the WSDOT "Work Zone Traffic Control Guidelines." A minimum of 5 working days will be required for review. Plans will be developed by the Traffic Control Supervisor or a licensed civil engineer. The plans as provided by the Contractor shall include and not be limited to the following information:

- Minimum lane widths provided for vehicular travel.
- Location, legend, and size for all signage.

- Location of flagger stations.
- Lane closure tapers.
- Identification and spacing for traffic control devices
- Identification of detour routes for road closures
- Pedestrian paths through the construction zone.

The Contractor shall provide flaggers, signs, and other traffic control devices not otherwise specified as being furnished by the Contracting Agency. The Contractor shall erect and maintain all construction signs, warning signs, detour signs, and other traffic control devices necessary to warn and protect the public at all times from injury or damage as a result of the Contractor's operations which may occur on highways, roads, streets, sidewalks, or paths. No work shall be done on or adjacent to any traveled way until all necessary signs and traffic control devices are in place. The Contractor shall maintain a pedestrian route through the site at all times.

## **1-10.2 Traffic Control Management**

### **1-10.2(1) General**

Section 1-10.2(1) is supplemented with the following:

*(October 3, 2022 WSDOT GSP, Option 1)*

The Traffic Control Supervisor shall be certified by one of the following:

The Northwest Laborers-Employers Training Trust  
27055 Ohio Ave.  
Kingston, WA 98346  
(360) 297-3035  
<https://www.nwlett.edu>

Evergreen Safety Council  
545 135th 11 Ave. NE  
Kirkland, WA 98034-8709  
1-800-521-0778  
<https://www.esc.org>

The American Traffic Safety Services Association  
15 Riverside Parkway, Suite 100  
Fredericksburg, Virginia 22406-1022  
Training Dept. Toll Free (877) 642-4637  
Phone: (540) 368-1701  
<https://atssa.com/training>

Integrity Safety  
13912 NE 20th Ave.  
Vancouver, WA 98686  
(360) 574-6071  
<https://www.integritysafety.com>

US Safety Alliance  
(904) 705-5660  
<https://www.ussafetyalliance.com>

K&D Services Inc.  
2719 Rockefeller Ave.  
Everett, WA 98201  
(800) 343-4049  
<https://www.kndservices.net>

#### **1-10.2(2) Traffic Control Plans**

The first sentence of Section 1-10.2(2) is replaced with the following:

Traffic control plans have not been provided by the Owner. The Contractor shall prepare traffic control plans. Traffic control plans shall be prepared based on the requirements set forth in Sections 1-07.23 and 1-10.1 of these Special Provisions.

**END OF DIVISION 1**



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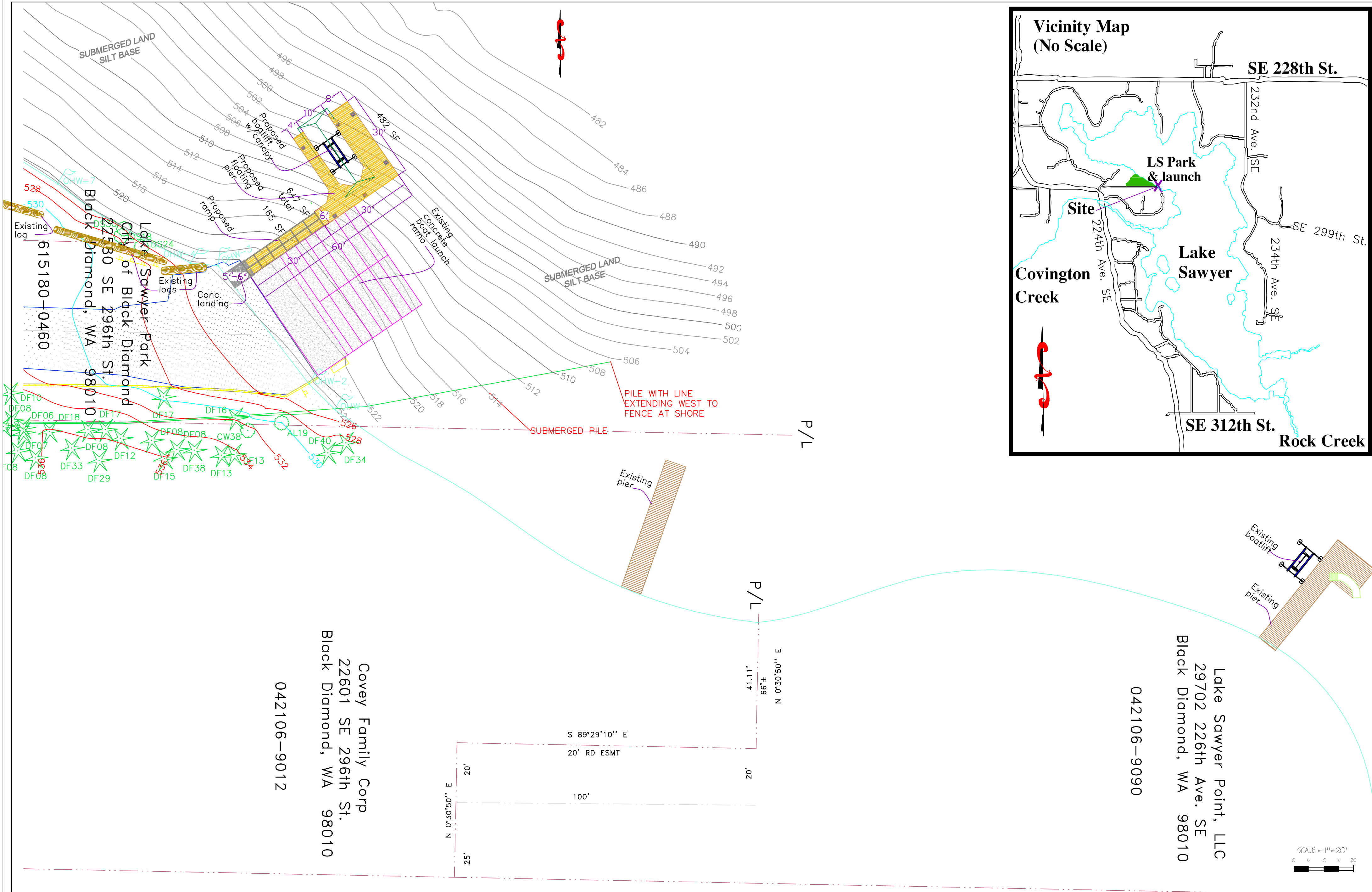
# **Appendix A**

## Project Plans and Technical Specifications

# Ashley Shoreline Design & Permitting

16412 NE 10th Place  
Bellevue, Washington 98008-3707  
Phone: (425) 957-9381  
greg@shoreline-permitting.com

DRAWING BY: Gregory W. Ashley  
Proprietary Information. This drawing contains confidential and / or privileged information which is intended for use by specific licensed individuals only. Any copying, disclosure, or dissemination of this communication is prohibited. All Designs Copyright 2023 - Ashley Shoreline Design & Permitting



SHORELINE PROJECT FOR : City of Black Diamond - Lake Sawyer Park  
22480 SE 296th St.  
Black Diamond, WA 98010

PAGE: 1 of 3

LOCATION: Lake Sawyer  
LAT: 47° 20' 14" North  
LONG: -122° 02' 32" West  
LENGTH FROM OHWM: 60'

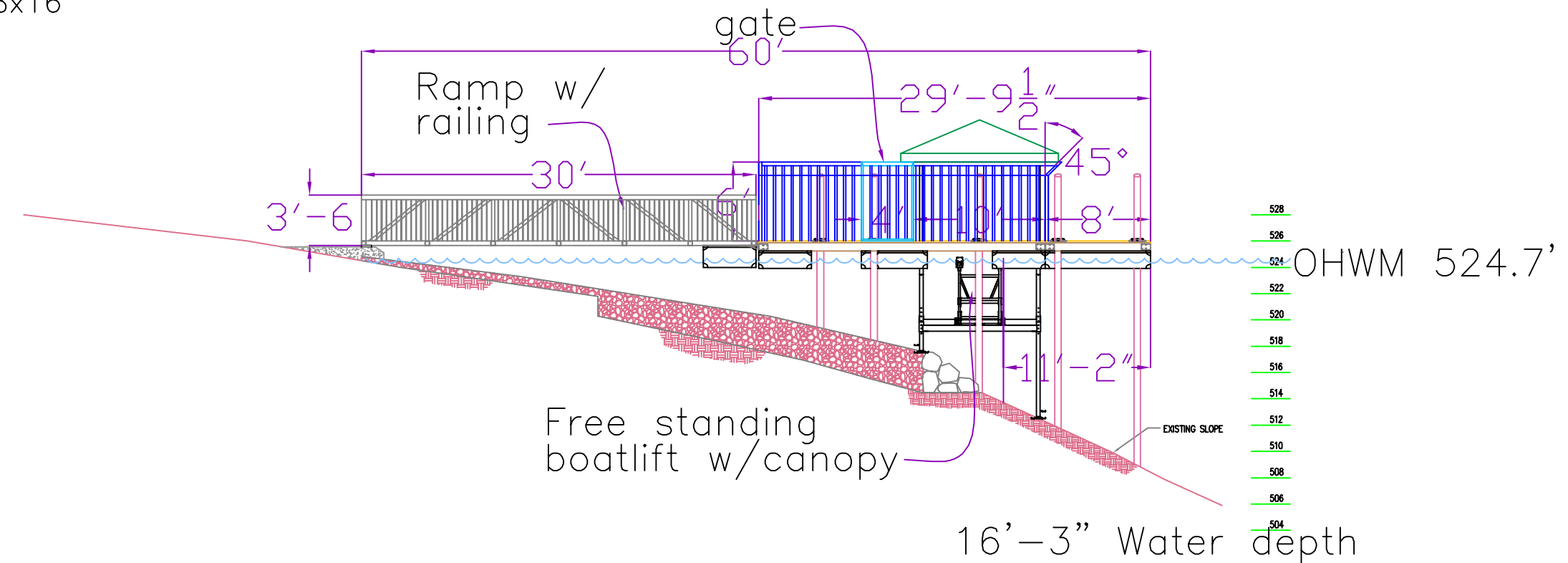
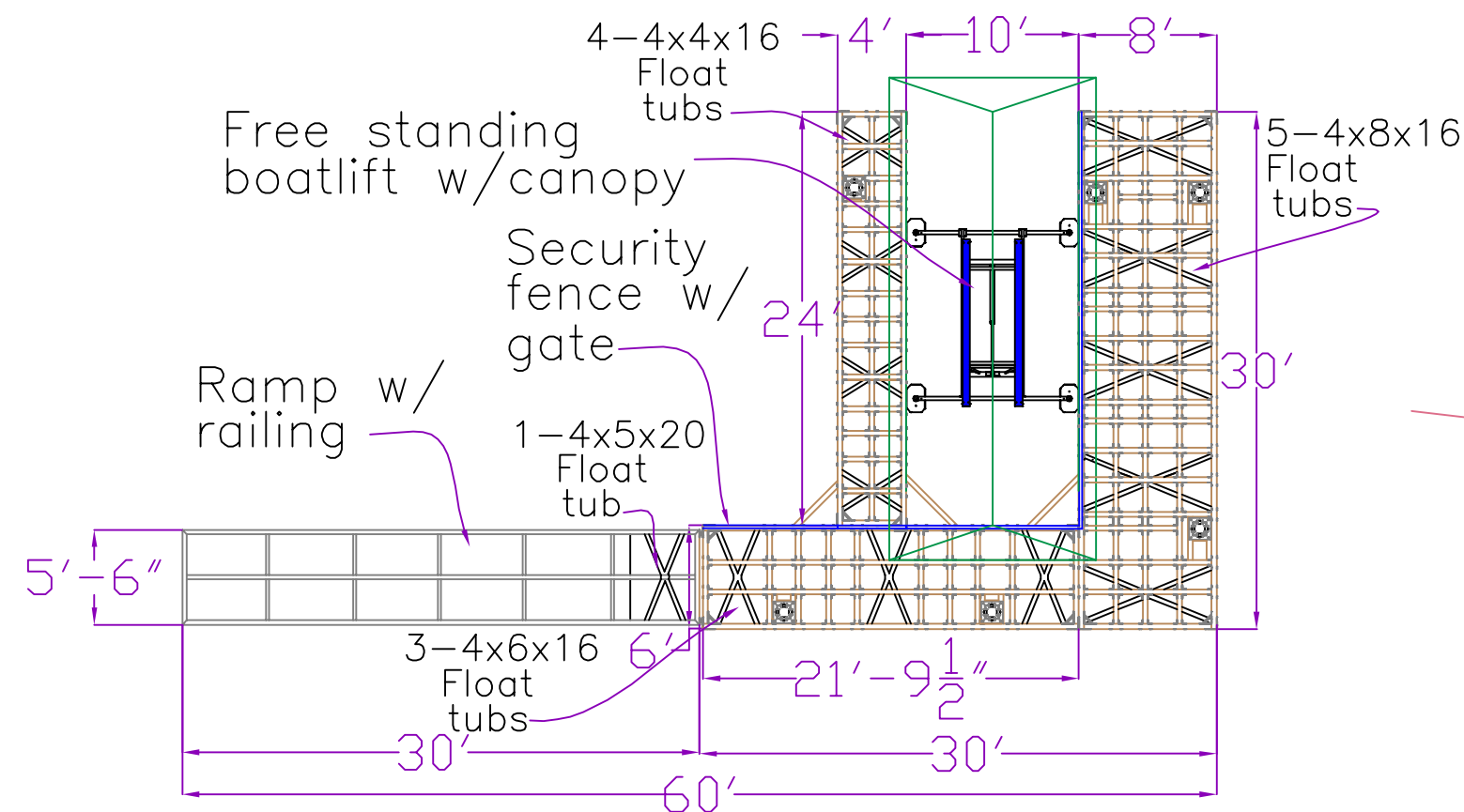
DATUM:

SQ. FT. : 647

PROJECT DESCRIPTION: Build new floating pier. Install 165 SF aluminum ramp. Install 482 SF floating pier. Install a freestanding aluminum boatlift with an attached translucent canopy. Install a security fence around boatslip.

DATE: 2/25/2024





1. ALL PILINGS TO BE DRIVEN TO REFUSAL.
2. PILINGS TO BE 6" DIA. SCH 40 DOUBLE WALL STEEL TYPICAL
3. STRINGERS TO BE A MAXIMUM 2' O.C.
4. DECKING ATTACHED TO STRINGERS WITH S.S SCREWS
5. DECKING TO BE TITAN GRATED DECKING — 47% OPEN SPACE
6. INTERNAL PILE HOOPS TO BE STEEL FRAME W/DELLRIN SLEEVES
7. SECURITY FENCE TO BE 6061 ALUMINUM
8. 6061 ALUMINUM RAMP TO BE ADA COMPLIANT W/SAFETY RAILINGS.

## NOTES:

ALL PILINGS TO BE HOT DIPPED GALVANIZED STEEL  
STRINGER MATERIAL IS DOUGLAS FIR # 1 — ACZA TREATED TO .40 OR REFUSAL  
DECKING TO BE GRATED  
WDFW APPROVED MATERIALS AND METHODS  
BOATLIFT TO BE 12 VOLT BATTERY OPERATED, SOLAR CHARGED FREESTANDING ALUMINUM  
CANOPY TO BE ALUMINUM FRAME WITH TRANSLUCENT FABRIC COVERING

482 SF x 50 lbs. = 24,100 lbs. of floatation proposed

4'x8'x16" float tub provide 2,455 lbs. of buoyancy each

8'x30'x45 lbs.=10,800 lbs.

10,800 lbs/2,455 lbs = 4.4 tubs

5 tubs x 2,455 lbs. = 12,275 lbs.

4'x6'x16" float tub provide 1,835 lbs. of buoyancy

6'x21.79'x45 lbs. = 5,883 lbs.

5,883 lbs/1,835 lbs = 3.2 tubs

3 tubs x 1,835 lbs. = 5,655 lbs.

4'x4'x16" float tub provide 1,215 lbs. of buoyancy

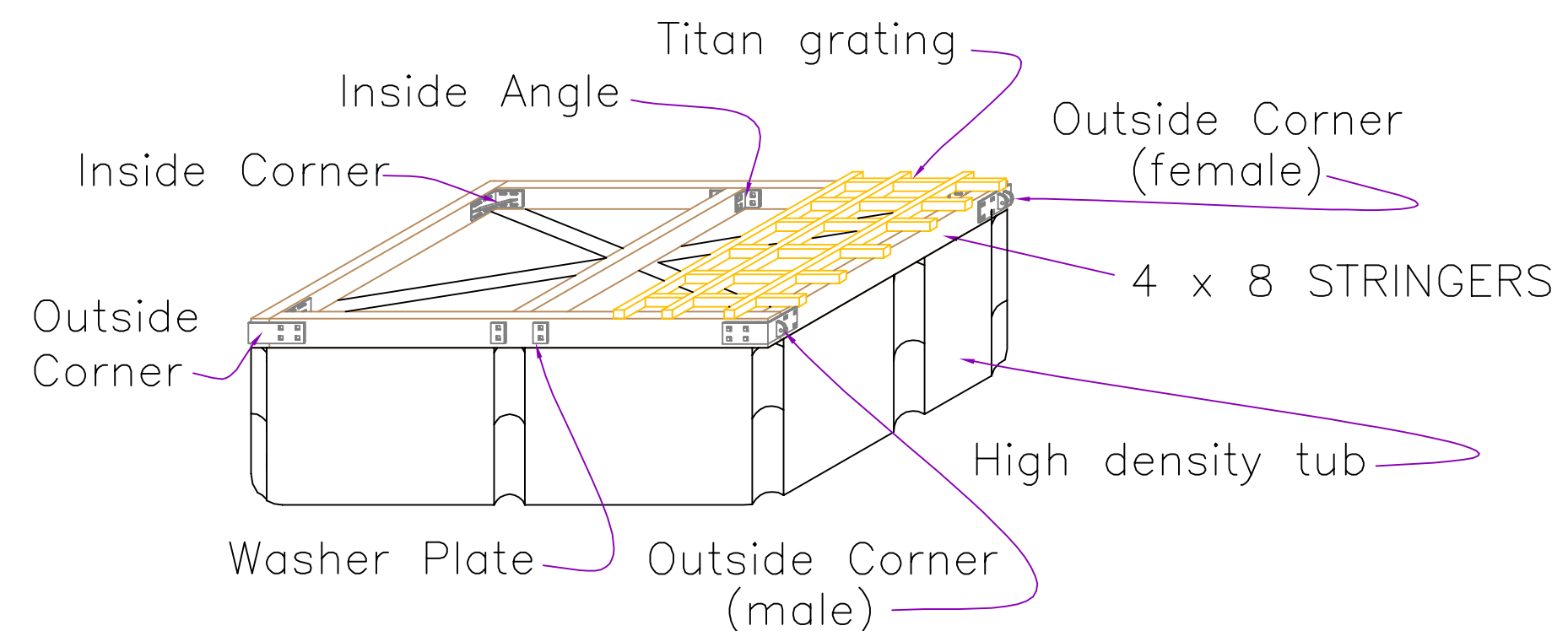
4'x24'x45 lbs. = 4,320 lbs.

4320 lbs/1,215 lbs = 3.5 tubs

4 tubs x 1,215 lbs. = 4,860 lbs.

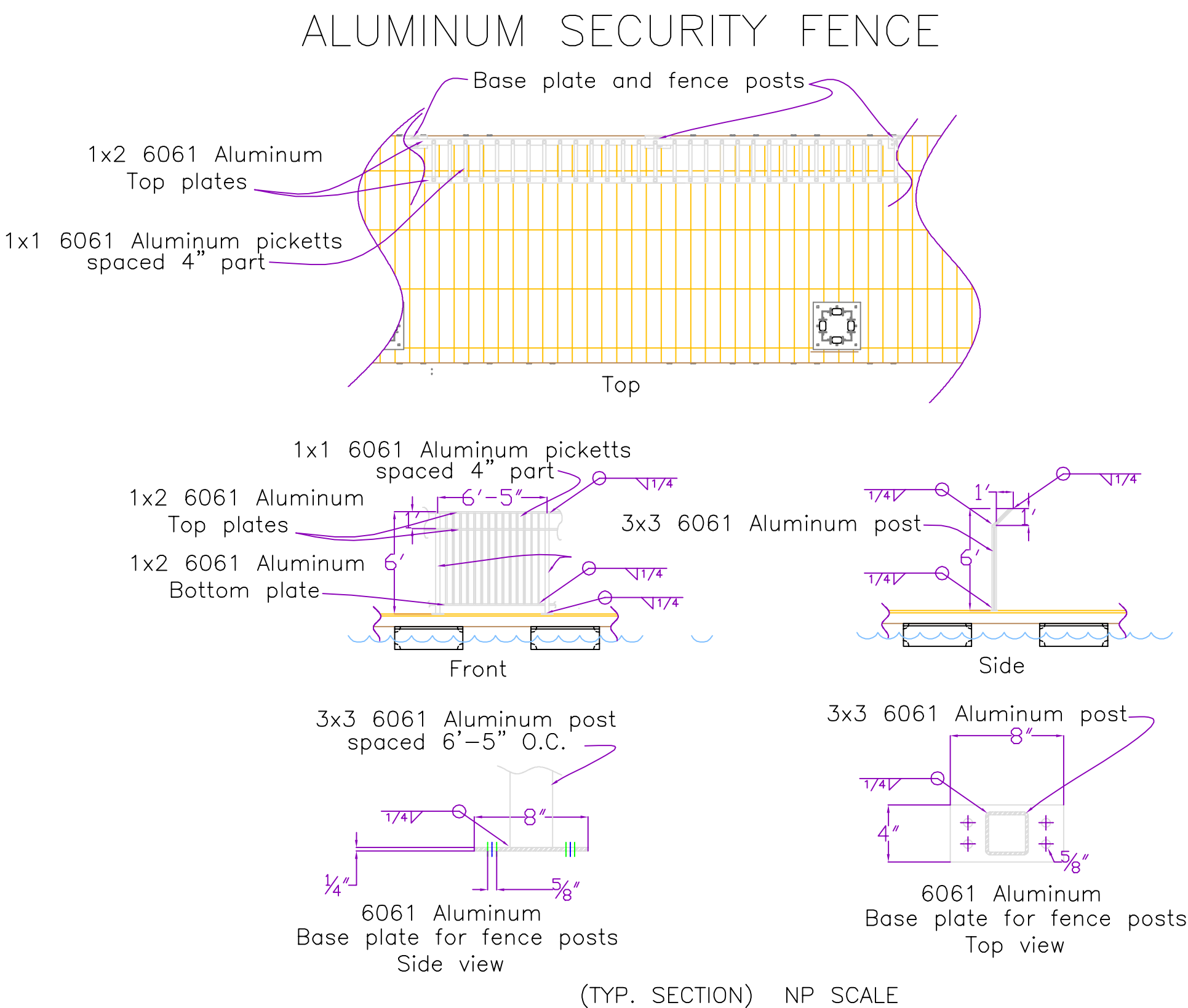
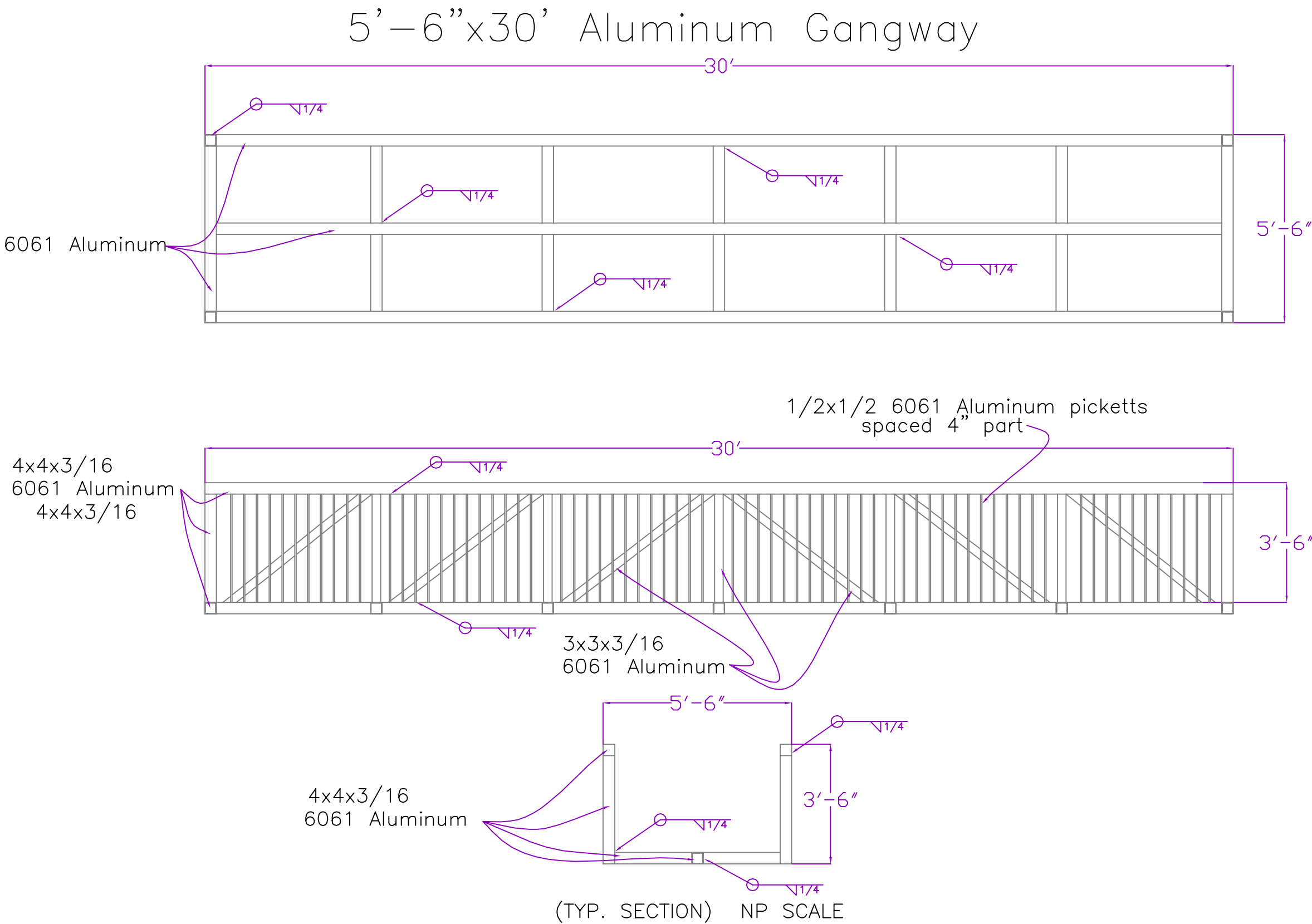
4'x5'x24" float tub provide 2,235 lbs. of buoyancy

24,100 lbs proposed-----25,025 lbs supplied

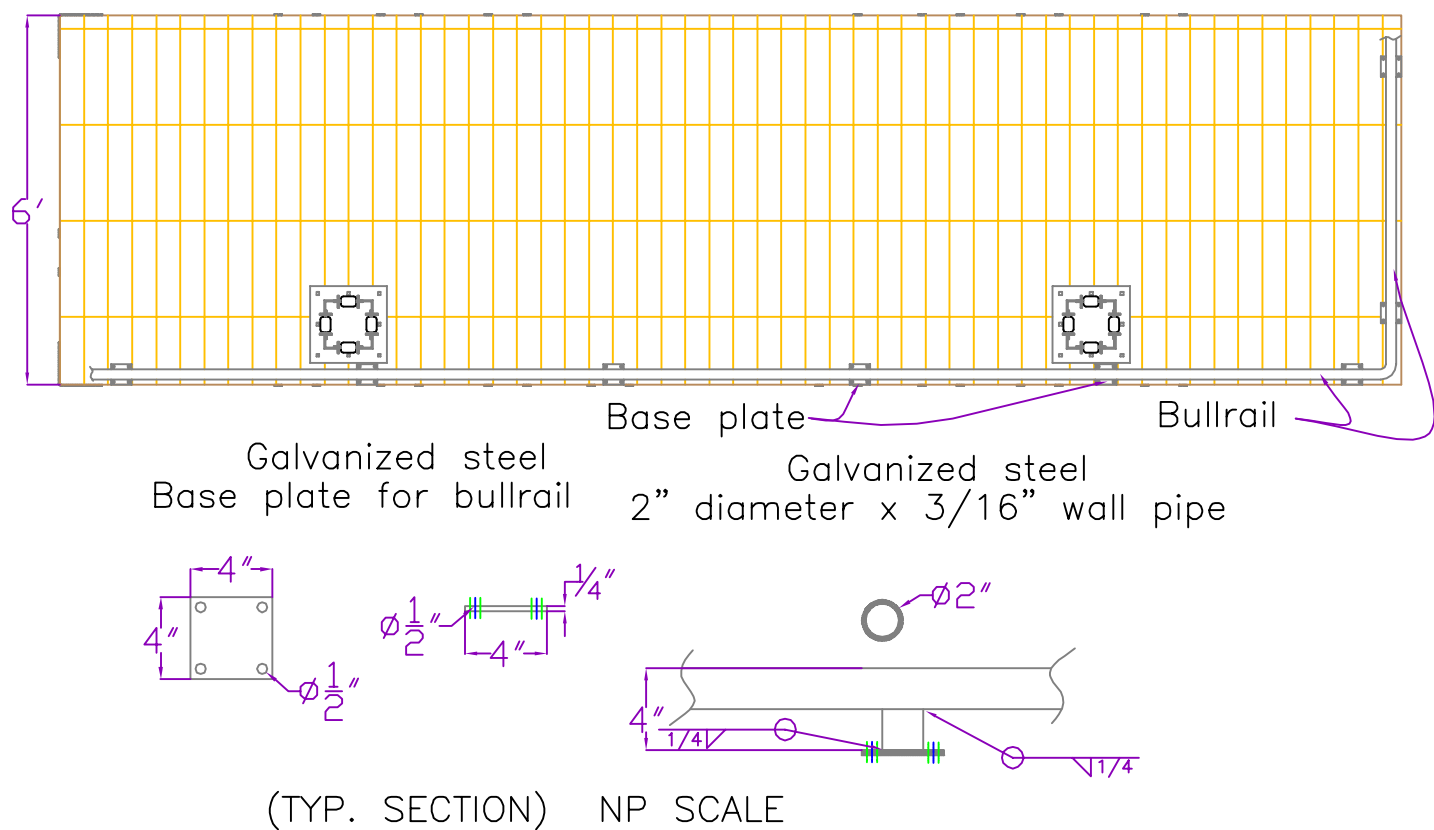


(TYP. SECTION)

STRINGER MATERIAL IS DOUGLAS FIR — ACZA TREATED TO .40 OR REFUSAL  
TUBS ARE HIGH DENSITY POLYETHELENE HOMOPOLYMER  
TUB AND FOAM SYSTEM IS COMPLETELY CLOSED TO THE ENVIORNMENT  
DECKING IS GRATED



GALVANIZED STEEL SAFETY BULL RAIL



DECKING PRODUCTS

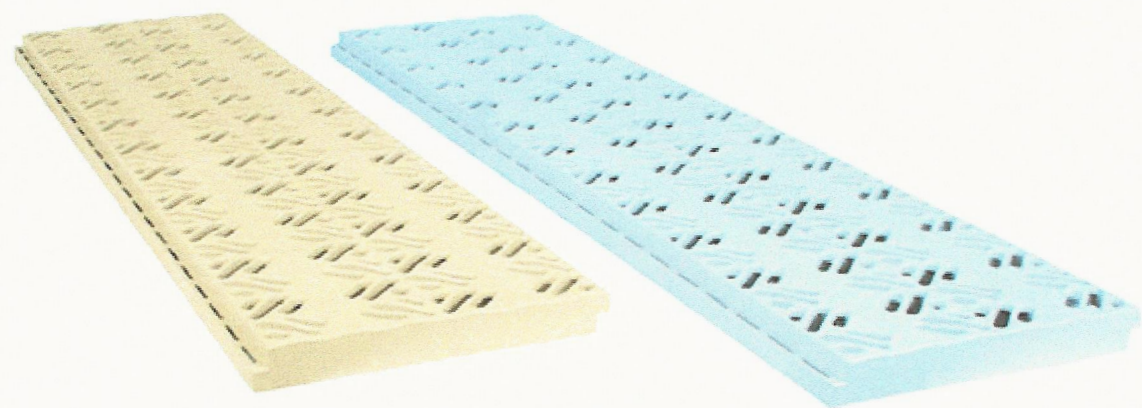
[Installation Guide \(/decking-products/installation-guide/\)](/decking-products/installation-guide/)

[Specs and Features \(/decking-products/specs-and-features/\)](/decking-products/specs-and-features/)

[Warranty \(/decking-products/warranty/\)](/decking-products/warranty/)

CLASSIC

X-SERIES



The X-Series is for the boater who prefers a more modern design. With its X shape built into the boards this design is quickly gaining popularity. Offering the same features as our Classic boards, the X-Series design is for the consumer that wants your neighbors to take notice.

Titan X-Series	Panel Size	Span	Deflection*	Weight
Non-Reinforced	48"	16"	0.171"	
Reinforced	36"	18"	0.067"	
	48"	16"	0.078	
	48"	24"	0.089"	
	60"	20"	0.096"	



Available in 2-ft, 3-ft, 4-ft & 5-ft lengths

Depth 1.5

## SERIES PHOTO GALLERY

### OPEN X-SERIES

### WOOD-GRAIN

## TITAN QUALITY

Titan Deck was engineered so your decking will be the last thing on your mind. We know you would rather be bonding with your children, reeling in a lunker, carving a turn in your water skis, or stargazing with a loved one, than working on your dock.

Titan Deck is made out of 100% polypropylene, which is a sturdy plastic that will take everything you and Mother Nature can throw at it. Available in four styles: Classic, X-Series, Open X-Series, and Wood-Grain.

All Titan Deck products come with UV protection which will prevent significant fading. Titan Deck will also handle any wild weather changes. All Titan Deck materials have been tested in temperatures ranging from -25°F to 120°F.

Titan Deck products are covered by a 12 year limited warranty.

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**[info@titandeck.net](mailto:info@titandeck.net)**

**803 Central Avenue North, Brandon MN 56315**

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# **Appendix B**

SEPA Determination Of  
Non-Significance  
Dated January 18, 2024





# CITY OF BLACK DIAMOND

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Physical Address: 24301 Roberts Drive  
Mailing Address: PO Box 599  
Black Diamond, WA 98010

Phone: (360) 851-4447  
Fax: (360) 851-4501  
[www.blackdiamondwa.gov](http://www.blackdiamondwa.gov)

## SEPA DETERMINATION OF NON-SIGNIFICANCE (DNS) AND NOTICE OF PUBLIC HEARING

**Date of Issuance:** January 18, 2024

**Name of Proposal:** City of Black Diamond Public Dock and Police Boat Moorage – Shoreline Substantial Development Permit (SSDP) and Shoreline Variance

**Description of Proposal:** The applicant proposes a new public pier and boat slip to accommodate moorage and safely secure the City Police boat on Lake Sawyer in accordance with the City's Shoreline Master Program. The boating facility would extend 60 feet in length from the OHWM and cover 647 SF.

**Application Numbers:** PLN23-0065 (SSDP), PLN23-0064 (Shoreline Variance), and PLN23-0066 (SEPA)

**Location of Proposal:** 22480 SE 296th Street, Parcel Number 615180-0460 located in a portion of the NE1/4 of Section 4, Township 21 North, Range 6 East, Willamette Meridian, King County, Washington.

**Owner/Applicant:** City of Black Diamond

The lead agency for this proposal has determined that the proposal will not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after reviewing a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☒ This DNS is issued under WAC 197-11-355 using the optional DNS process; there is no further comment period.

**Responsible Official/Staff Contact:** Mona Davis

**Position/Title:** Community Development Director/SEPA Official, City of Black Diamond

**Address:** 24301 Roberts Dr, Black Diamond, WA 98010

**Phone:** (360) 851-4528

**Email:** [mdavis@blackdiamondwa.gov](mailto:mdavis@blackdiamondwa.gov)

Signature: Mona Davis

Date: January 18, 2024

**Appeal of DNS:** You may appeal this determination by submitting the required fees and City appeal form containing specific factual objections to the Community Development Department, located at 24301 Roberts Drive (PO Box 599), Black Diamond, Washington 98010. The appeal period for this DNS will end on Thursday, February 1, 2024.

**NOTICE IS FURTHER GIVEN** that the City's Hearing Examiner will conduct an **OPEN RECORD PUBLIC HEARING** on the Public Dock and Police Boat Moorage SSDP and Shoreline Variance applications which will take place on Thursday, February 15, 2024 at 4:00 PM online via Zoom. The public is encouraged to participate by 1) calling 253-215-8782 and entering Meeting ID# 895 0827 0228 and Password 053115 to listen to the proceedings telephonically; or 2) joining the meeting by Zoom link <https://zoom.us/j/4454477047?pwd=eGxRY3ZEeU14SVM2cGRBcUxCSjdmZz09> (same Meeting ID# and Password)

In accordance with BDMC 2.30.090, the staff report will be available at least five working days prior to the scheduled hearing. All decisions or recommendations of the examiner will be rendered within 10 working days following the closing of the record, unless determined otherwise. You may request a copy of the decision once made.

**Reconsideration:** Per BDMC 2.30.120, any party of record may, within seven working days of the date of the examiner's written decision, file with the department a written request for reconsideration based on errors of procedure, errors of law or fact, error in judgment, or the discovery of new evidence which was not reasonably available at the open record public hearing. The filing of a request for reconsideration shall effectively stay the appeal period until the examiner issues his or her decision on the request.

**Appeal of Hearing Examiner Decision:** Per RCW 90.58.180(1), "Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of filing of the decision as defined in RCW 90.58.140(6)."

<b>Application Process:</b>	Date of Application: September 25, 2023 Complete Application: October 12, 2023 Notice of Application: October 18, 2023 Notice of Public Hearing: January 18, 2024 Public Hearing: Thursday, February 15, 2024 at 4:00 PM
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# **Appendix C**

Hearing Examiner Decision  
Dated February 22, 2024

BEFORE THE CITY OF BLACK DIAMOND HEARING EXAMINER

IN RE:

CITY OF BLACK DIAMOND PUBLIC  
DOCK AND POLICE BOAT  
MOORAGE,

HEARING NO. PLN23-0065 (SSDP)  
HEARING NO. PLN23-0064 (Shoreline  
Variance)

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND DECISION

**APPLICANT:**

City of Black Diamond  
Public Works Department

**REPRESENTATIVE:**

Kevin Esping, Facilities Department

**SUMMARY OF REQUEST:**

A Shoreline Substantial Development Permit and Shoreline Variance to construct a new public dock and boat slip to secure the City Police boat on Lake Sawyer. A variance is required due to the proposed length, width and square footage of the public dock.

**LOCATION OF PROPOSAL:** 22480 SE 296th Street. Parcel No. 615180-0460.

**SUMMARY OF DECISION:** The requested Shoreline Substantial Development Permit and Shoreline Variance are approved subject to slightly modified conditions.

**BACKGROUND**

The City, as Applicant, seeks approval of a Shoreline Substantial Development Permit and Shoreline Variance in order to construct a new public dock and boat slip adjacent to the existing public boat ramp on Lake Sawyer at 22480 SE 296th Street. The primary purpose of the proposed facility is to establish moorage and a boat lift for the City's police boat as part of an effort to improve the police department's presence on the lake. The secondary purpose of the facility is to provide a public access dock with ADA compliance, and to provide improved loading/unloading of boats at the adjoining public ramp. There has been some public comment

*Findings of Fact, Conclusions  
of Law and Decision - 1*

CITY OF BLACK DIAMOND HEARING EXAMINER  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-3387

1 but no significant opposition. The Department of Ecology has several minor concerns or  
2 recommended changed but, subject to slightly modified conditions of approval, appears to  
3 support the application.

### 4 PUBLIC HEARING

5 The public hearing commenced at 4:00 p.m. on Thursday, February 15, 2024. The  
6 hearing was a "hybrid" hearing consisting of both a remote hearing utilizing the Zoom platform  
7 along with the opportunity to appear in person. The City appeared through Andrew Love,  
8 Contract Planner, along with Mona Davis, Community Development Director. The Applicant,  
9 the City Public Works Department, appeared through Kevin Esping from the City's Facilities  
10 Department along with Scott Hanis, Director of Public Works. The project's designer, Greg  
11 Ashley, also appeared as part of the City's presentation. Testimony was received from these  
12 individuals along with one member of the public, Brad Covey, as well as Rebekah Padgett from  
13 the Department of Ecology ("Ecology"). A verbatim recording was made of the public hearing  
14 and all testimony was taken under oath. The following exhibits were considered:  
15

16	Exhibit 1	Notice of Application and SEPA Comment Period
17	Exhibit 2	SEPA Checklist (Revised)
18	Exhibit 3	Plans (Revised)
19	Exhibit 4	Application Narrative (Revised - includes response to public comments)
20	Exhibit 5	Compilation of Public Comments:
21		• Ryan Shaw, Washington Department of Fish & Wildlife (WDFW)
22		• Julian Douglas, WDFW
23		• Brad Covey
24		• Terry Shelly
25		• Mark Tullis
	Exhibit 6	Combined Notice of SEPA DNS and Public Hearing
	Exhibit 7	City Staff Report
	Exhibit 8	Landscape Plan
	Exhibit 9	Fence Design
	Exhibit 10	Staff's Response to Public Testimony

1 The hearing began with the testimony of Andrew Love, Contract Planner for the project  
2 and author of the City's Staff Report. Mr. Love relied extensively on his thorough Staff Report  
3 (Exhibit 7). He began by explaining that the City Public Works Department, on behalf of the  
4 Police Department, seeks approval of a Shoreline Substantial Development Permit and Shoreline  
5 Variance in order to construct a new public dock and boat slip adjacent to the existing public  
6 ramp on Lake Sawyer. The primary purpose of this project is to provide a moorage slip and boat  
7 lift for the City's police boat for use on Lake Sawyer. The secondary purpose is to establish a  
8 public dock adjacent to the boat ramp to improve public access to the lake and achieve ADA  
9 compliance. It will also assist in unloading and loading of boats from the adjacent ramp. The  
10 project's proximity to the shoreline of Lake Sawyer requires a Shoreline Substantial  
11 Development Permit, while the proposed length, width and square footage of the public dock  
12 require a Variance from the City's shoreline regulations.

14 Mr. Love began by noting that the property's zoning is Public (PUB); that its  
15 Comprehensive Plan Designation is also Public, and that its Shoreline Environment Designation  
16 (SED) is Urban Conservancy. The project is consistent with all of these designations.

17 The proposed dock will extend 60 feet from the Ordinary High Water Mark (OHWM) of  
18 the lake and cover 647 square feet. Its shape resembles an inverted "F": commencing at the  
19 shoreline, it extends into the lake initially as a walkway and then forms two arms as part of a  
20 larger public dock area with the two fingers separated by the boat slip as shown on the site plan,  
21 page 4 of Exhibit 1. Much of the dock will be opened to the public with the exception of the area  
22 surrounding the boat slip and launch for the police boat. That portion of the dock will be secured  
23 by aluminum safety fence to prevent public access to the police boat. The portion of the dock  
24

1 waterward of the fenced area will be opened to the public. A canopy will extend across the  
2 police boat moorage to improve protection of the boat.

3 Mr. Love then quickly went through the requirements of Title 18 BDMC and then  
4 reviewed the project's consistency with the City's Shoreline Master Program (SMP) including  
5 Chapters 5 and 6 of the SMP, especially Sections F, G and H. Mr. Love explained that the  
6 project, as conditioned, is found to be consistent with all applicable codes and provisions of the  
7 SMP.

8 To assure no net loss of the ecological function of the shoreline, the project has been  
9 conditioned on a landscaping plan consistent with any requirements imposed by WDFW as part  
10 of its approval for a HPA Permit. This would most likely consist of two trees and three shrubs  
11 (or perhaps five trees and seven shrubs) as determined by a site visit by Staff and WDFW.

12 Mr. Love then described the three requested variances:

13 1. City shoreline regulations prohibit docks exceeding 60 feet in length if the depth  
14 of water is greater than 11 feet. The depth of water at this location is approximately 16 feet. The  
15 Applicant seeks a variance from the length limitation so that the proposed dock can extend 60  
16 feet beyond the OHWM despite the depth of water at this location. Mr. Love explains that this  
17 variance is critical to allow sufficient space for both the proposed police boat moorage as well as  
18 areas of public use, including ADA compliance.

19 2. Shoreline regulations limit width of decking to 4 feet within the first 30 feet from  
20 the OHWM and 6 feet elsewhere including all walkways and fingers. Public Works seeks to  
21 have the first 60 feet of the structure be 6 feet in width increasing to 8 feet, including that portion  
22 of the public deck waterward of the police boat moorage. Again, this variance is sought to widen  
23  
24  
25

1 the walkway and deck in order to achieve the needed combination of a secure facility for the  
2 police boat yet sufficient space for public access.

3 3. City regulations restricts square footage of docks to 600 square feet if public  
4 access is provided. The proposed facility has a total square footage of 647 square feet, or  
5 slightly above the allowed maximum. Once again, this variance is sought to provide a large  
6 enough facility to allow safe use by the public including ADA compliance.

7  
8 At the conclusion of Mr. Love's direct testimony he was asked several questions by the  
9 Hearing Examiner. Mr. Love responded to these questions with the aid of the project's designer,  
10 Mr. Ashley. Collectively, Mr. Love and Mr. Ashley confirmed that a landscape plan had not yet  
11 been designed for the project but that one would be prepared consistent with the requirements of  
12 WDFW. In response to some concerns of the public regarding possible noise, Mr. Ashley  
13 confirmed that the project had been designed to minimize noise caused by waves against the  
14 pilings, and that double walled pilings were being used to deaden their sound. In response to the  
15 Hearing Examiner's concerns that the decking be open grading to allow light through, Mr.  
16 Ashley confirmed that the project has been designed with a "Titan" grated deck which will  
17 achieve 47% transparency.

18  
19 At the conclusion of the Planning Department's presentation, the City Public Works, as  
20 Applicant, then presented its testimony through Kevin Esping of the Facilities Department. Mr.  
21 Esping explained that the proposed facility is a critical need for the City for various reasons. It  
22 will allow for an improved police presence on the lake which, in turn, will help assure  
23 compliance with safe boating regulations. The facility will also allow for greater public access  
24 and ADA compliance. It will also provide a much safer entry/exit point for those getting into or  
25 out of boats at the public ramp.



1 At the conclusion of Mr. Esping's testimony the hearing was opened for public comment:

2 Brad Covey owns the adjoining property. He is generally supportive of the project but  
3 has several questions:

4 1. Mr. Covey wanted to know how much of the dock would be available to  
5 the public. Mr. Ashley responded that the portion waterward of the fencing around the  
6 police boat would be available to the public, which is why this area has greater width so  
7 that it can achieve ADA compliance.

8 2. Mr. Covey was curious as to the method by which the pontoons serving as  
9 floatation would be joined, and whether they would work independently of each other or  
10 as a single unit. Mr. Ashley again responded and explained that the pontoons would be  
11 formed to serve as a single unit, thereby avoiding additional noise caused by their  
12 colliding/rubbing together.

13 3. Mr. Covey was curious as to how the boat lift was powered, and whether it  
14 was expected to generate much noise. Mr. Ashley responded and explained that the boat  
15 lift will be battery operated and produce very little noise.

16 Following Mr. Covey's testimony, Rebekah Padgett testified on behalf of Ecology. Ms.  
17 Padgett first wanted to clarify that the application is slightly incorrect in how it describes the  
18 requested variances: Ms. Padgett correctly noted that the two proposed finger docks begin with  
19 triangular areas where they meet the walkway. These additional triangular areas increase the  
20 width of the finger docks at their beginning points by 3 feet on each side. This means that the  
21 first finger dock (the one landward of the boat launch) briefly widens to 10 feet where it connects  
22 to the main walkway. Similarly, the larger finger dock waterward of the boat moorage briefly  
23 widens to 11 feet instead of 8. While these widened decks are very brief in distance, they  
24  
25

1 nonetheless require recognition as a variance from the maximum deck width limitations. The  
2 City agrees and asks that the requested variances be altered accordingly.

3 Ms. Padgett next inquired as to whether there is any aquatic vegetation currently located  
4 in the area of the proposed dock. Mr. Ashley responded that there is none.

5 Ms. Ashley next noted that the site plans suggest that large boulders are being placed  
6 underneath the new dock. Mr. Ashley responded and explained that no new rock is being  
7 proposed and that what is shown in the diagram is existing rock, not new rock.

8 Ms. Padgett noted that Ecology will want to see the actual landscaping plan rather than  
9 have its design decided later by the City and WDFW.

10 Ms. Padgett inquired as to whether the facility might instead be referred to as a "pier"  
11 instead of a "dock", as piers are allowed greater square footage and thus would not require a  
12 variance from the square footage limitations. Mr. Love responded to this question and explained  
13 that if the facility is located on floats then it must be deemed a dock, not a pier. As this project is  
14 supported by floats is a dock, not a pier.

15 Ms. Padgett inquired as to whether the City's SMP has any standards for fencing  
16 including requirements for visibility or aesthetics. Mr. Love responded that the SMP does not  
17 have any standards for fencing for this type of use. Ms. Padgett let the City know that Ecology  
18 would want to know the design and look of the fencing as part of its later review.

19 Ms. Padgett last inquired as to the standards in the SMP for over water canopies. This  
20 led to a discussion between Ms. Padgett and various staff members as to the standards for such  
21 facilities. At the conclusion of that discussion it was agreed that the proposed canopy over the  
22 police boat moorage would conform to all applicable standards.  
23  
24  
25

1 Ms. Padgett's testimony concluded public comments. Following this testimony the City  
2 was allowed an opportunity to respond. Mr. Love reiterated that the project is an important one  
3 for the City in order to protect the new police boat; enhance public safety on the lake; and  
4 provide greater public access and ADA compliance. Mona Davis then added that the City is  
5 operating under an extremely tight work window (April 30) and therefore hopes that project  
6 approval can be obtained as quickly as possible.

7  
8 Through its representative, Ms. Padgett, Ecology has made clear that if it is to approve  
9 the requested permits it needs to be provided with a landscaping plan providing mitigation of any  
10 shoreline impacts and, secondly, must be provided additional information as to the design and  
11 material for the fencing surrounding the police boat moorage. The Hearing Examiner therefore  
12 directed the City to provide these two additional items by Wednesday, February 21, 2024. City  
13 Staff timely responded by submitting a landscape plan (Exhibit 8) and fence design (Exhibit 9).  
14 As shown on the landscape plan, the City proposes to mitigate any shoreline impacts through the  
15 following: The planting of two Shore Pines and three Red Osier Dogwoods along the shore  
16 adjacent to the facility as demonstrated on the landscape plan.

17 As demonstrated on Exhibit 9, the proposed fence design calls for an aluminum post  
18 fence 6 feet in height with aluminum pickets placed 4 inches apart and anchored to the dock by  
19 aluminum posts.

20  
21 The City has also submitted a Supplemental Narrative (Exhibit 10) in reference to the  
22 flared areas of deck (referred to as "fillets"). The City acknowledges that these fillets were not  
23 addressed in the City's Staff Report but that they are part of the requested variance from the  
24 width standards. The City's Supplemental Narrative states:

1 "These extend the width of the dock in small portions to roughly 9, 10 and 11 feet  
2 respectively (see Figure 1 below). This means these widths are also requested as  
3 part of the Shoreline Variance. These sections were already calculated in the  
4 square footage prior to the public hearing. Like the rest of the dock, the surface of  
5 these fillets is grated decking. There are no additional fillets under these small  
6 sections. The fillets are the minimum necessary to allow for easier access to the  
7 boat in times of emergency, which may include navigating the overwater structure  
8 with police gear or transporting people during rescue."

9 I concur that the project is an unusually important one as it will enhance both public  
10 safety and public use of Lake Sawyer, but it has a limited work window and its approval must  
11 therefore occur as soon as possible. There has been no substantive opposition. And, while  
12 Ecology has raised several questions about the project it has not voiced any objections. I  
13 therefore conclude that the requested Shoreline Substantial Development Permit and variance  
14 should be approved, with the requested variance modified slightly to recognize a greater width of  
15 the finger decks at their points of beginning.

16 Accordingly, I make the following:

### 17 **FINDINGS OF FACT**

18 1. The Applicant, the City of Black Diamond, seeks a Shoreline Substantial  
19 Development Permit to construct a new public dock and boat slip to accommodate moorage for  
20 the City's police boat on Lake Sawyer while also allowing public access to a portion of the dock.  
21 The facility would extend 60 feet waterward from the Ordinary High Water Mark of the lake and  
22 cover 647 square feet. A safety fence would surround the boat slip to provide security for the  
23 police boat.

24 2. As part of its application, the City requests a Shoreline Variance from the length,  
25 width and square footage limitations set forth in the City's Shoreline Master Program (SMP).

1           3.       Any Findings contained in the previous Background and Public Hearing Sections  
2 are incorporated herein by reference and adopted by the Hearing Examiner as his Findings of  
3 Fact.

4           4.       The Hearing Examiner has admitted documentary evidence into the record, heard  
5 testimony, and taken this matter under advisement.

6           5.       The project site is located at 22480 SE 296th Street, Parcel No. 615180-0460 and  
7 is adjacent to the existing public boat ramp at Lake Sawyer.

8           6.       The project proposes to install six 6-inch galvanized steel double walled piles,  
9 installed by a vibratory pile driving system. A 5 1/2 foot by 30-foot aluminum truss ramp with  
10 side rails (containing 165 square feet) leads to a 482-square foot floating section with boat slip to  
11 accommodate the City's police boat. The floating section is comprised of a 6-foot-wide  
12 walkway, a 4-foot finger dock landward of the boat slip, a 10-foot-wide boat slip, and an 8-foot-  
13 wide finger dock waterward of the boat slip. A site plan is included within Exhibit 4.

14           7.       The facility will extend 60 feet in length from the OHWM and cover 647 square  
15 feet.

16           8.       There will be an aluminum freestanding hydraulic boat lift (battery operated) with  
17 an attached 12' x 28' translucent canopy to safely secure and protect the police boat. There will  
18 also be an aluminum safety fence surrounding the boat slip to prevent public access to the police  
19 boat (Exhibit 9).

20           9.       The project site has a zoning designation of Public (PUB).

21           10.      The project site has a land use designation of Public in the City's Comprehensive  
22 Plan.

1           11.     The site has a Shoreline Environment Designation (SED) of Urban Conservancy  
2 in the SMP.

3           12.     A Notice of Application was issued October 1, 2023, using the optional DNS  
4 process. The notice was mailed to all property owners within 300 feet of the parcel, published in  
5 the Enumclaw Courier Herald on October 18, 2023, posted onsite on October 18, 2023, and  
6 published in the City's website under Public Notices on October 18, 2023. The notice was also  
7 published to the SEPA register and emailed to agencies with jurisdiction.  
8

9           13.     The City, as lead agency, issued a SEPA Determination of Nonsignificance  
10 (DNS) on January 18, 2024.

11           14.     Notice of the SEPA Determination, along with notice of the public hearing, were  
12 mailed to all property owners within 300 feet, published in The Seattle Times on January 18,  
13 2024, posted onsite, and published on the City's website under Public Notices on January 18,  
14 2024. The combined DNS and public hearing was also published to the SEPA register and  
15 emailed to agencies with jurisdiction.

16           15.     The City received five comments in response to the various notices (Exhibit 5).  
17 None of the commenters expressed opposition to the project but rather had various concerns  
18 about its use including potential noise; the need to simultaneously make repairs to the public boat  
19 ramp; and concerns that the proposed design may not withstand wave action at the chosen site.  
20

21           Findings Relating to Consistency with the State Shoreline Management Act, Chapter  
22 90.58 RCW.

23           16.     The Staff Report, commencing at page 3, contains Findings relating to the  
24 project's consistency with the Shoreline Management Act, Chapter 90.58 RCW. City Staff finds  
25

1 that the project, as conditioned, is consistent with the policies outlined in RCW 90.58.020: (1)  
2 the project is dependent on shoreline location for its use and is a preferred use in the shoreline  
3 jurisdiction; (2) the project has been reviewed for potential environmental impacts and has been  
4 appropriately conditioned to avoid no net loss of the ecological function of the shoreline; and (3)  
5 the project is well suited to meet the public access goals of the SMA as it provides for public  
6 access to the dock and is ADA compliant.

7  
8 Findings Relating to Compliance with the Shoreline Regulations Set Forth in  
9 WAC 173-27-176(3).

10 17. The Staff Report, commencing at page 4, contains Findings relating to the  
11 project's compliance with the regulations set forth in WAC 173-26-176(3) and its guidelines for  
12 use of shorelines of the State. City Staff finds that the project, as conditioned, is in compliance  
13 with WAC 173-26-173(3)(1-10) for the reasons that:

- 14 ● The proposal is for a new dock and police boat moorage that is dependent upon its  
15 shoreline location.
- 16 ● The dock will allow public access to Lake Sawyer for recreational use.
- 17 ● The facility has been reviewed for environmental impacts to ensure no net loss of  
18 ecological function.
- 19 ● With the exception of the requested variances, the project conforms to all  
20 standards found in the Shoreline Master Program (SMP).
- 21 ● The facility meets the minimum 15-foot setback requirements from all property  
22 lines as required by the SMP.
- 23 ● There are no sites with historic, cultural or educational value that will be  
24 impacted.
- 25

- 1       •       The project is located on City-owned property and provides for public access.
- 2       •       The facility will allow for greater law enforcement presence on the lake to ensure
- 3 enforcement of regulations and to provide lifesaving services.
- 4       •       The project has no impact upon private property nearby.
- 5       •       The facility will increase the access to the lake by the public.
- 6       •       The new dock has been proposed in compliance with all applicable regulations
- 7 and with notice to all affected local, state, federal, and tribal agencies.

8       The Hearing Examiner concurs with these Findings.

9       Findings Relating to Compliance with the City's Shoreline Master Program (SMP).

10       18.       The Staff Report, commencing at page 6, contains Findings relating to

11 compliance with the requirements of Chapter 5, Section F - Overwater Structures and Launching

12 Facilities - as found in the City's SMP. City Staff finds that the project, as conditioned, and

13 subject to the variances requested, complies with Chapter 5 SMP, Section F.1-19. More

14 particularly:

15               1.       The project complies with all regulations contained in the SMP and all

16 other regulations imposed by state and federal agencies, local tribes or others that have

17 jurisdiction. The Applicant will have to apply for permits with WDFW prior to

18 commencing construction activities. The Department of Ecology will provide final

19 shoreline approval.

20               2.       Mitigation has been provided to ensure no net loss of ecological function.

21 A landscaping plan (Exhibit 8) has been provided and is consistent with the requirements

22 of WDFW. The new dock will have a grated surface to provide light penetration. Steel

23 piles will be utilized. No shoreline alteration is expected.



1                   3.     The proposed public dock and police boat moorage is for public access  
2 and water-dependent uses.

3                   4.     Does not apply.

4                   5.     The new dock is intended for public use and the City has demonstrated it  
5 is needed to support water-dependent uses.

6                   6.     Does not apply.

7                   7.     The Applicant seeks variances from dimensional standards in order to  
8 fully achieve the intended use of the facility.

9                   8.     The floating portion of the dock is not located within the first 30 feet of  
10 the shoreline. Instead, the first 30 feet is for a fixed ramp with handrails.

11                   9.     All float tubs are fully encapsulated and the deck is fully grated except for  
12 the float tubs. The floating dock will not ground during low water conditions.

13                   10.    The project will require a building permit to ensure that it is constructed in  
14 and maintained in a safe and sound condition.

15                   11.    There are no wooden components in contact with the water and all  
16 proposed piles are double walled galvanized steel.

17                   12.    Not applicable.

18                   13.    The project includes a boat lift with a translucent covering as allowed by  
19 this section.

20                   14.    Not applicable.

21                   15.    Not applicable.

22                   16.    The facility will be setback from side property lines by at least 15 feet.  
23  
24  
25

1           17.     The dock length has been minimized to the maximum extent possible.  
2     Nonetheless, to achieve the twin goals of a safe police boat facility together with public  
3     access requires a total dock length of 60 feet. Even so, the length of the dock will not  
4     impact navigational rights of adjacent property owners or the public.

5           18.     The length, width and total area of moorage structures as limited by this  
6     section will be exceeded but variances have been sought as more fully described in other  
7     Findings.

8           19.     The length, width and total area of moorage structures as limited by this  
9     section will be exceeded but variances have been sought as more fully described in other  
10    Findings.

11           Findings Relating to Requested Shoreline Variances.

12           19.     Chapter 5 of the SMP, Section F.18, imposes:

13                 •     That at the point at which 11 feet of water depth is reached, the deck not  
14                       exceed 60 feet in length from the OHWM.

15                 •     A maximum width of 4 feet within the first 30 feet from the OHWM, and  
16                       6 feet elsewhere including all walkways and finger decks, although an exception may be  
17                       granted to satisfy ADA standards and considerations.

18                 •     A maximum of 600 square feet if public access is provided.

19           20.     The Applicant seeks variances from each of these requirements:

20                 •     The proposed deck does not exceed 60 feet but does extend beyond the  
21                       point at which 11 feet of water depth is reached. At 60 feet, the proposed deck will be at  
22                       a depth of 16 feet and 3 inches, or well in excess of the 11-foot depth requirement.  
23  
24  
25

1           ●       The approach ramp and floating dock are both 6 feet wide minimum, and  
2       the waterward finger deck increases to more than 8 feet in width.

3           ●       The square footage is 647 square feet.

4       21.     The City finds that these requested variances are essential to carry out the  
5       intended functions of the proposed facility. The structure needs to be a minimum of 60 feet in  
6       length to safely accommodate both the proposed boat lift for the police boat while also providing  
7       adequate area to accommodate the public including ADA accessibility. The boat lift and  
8       attached canopy are both necessary to safely moor and protect the police boat. Water depth at  
9       the location drops quickly and the length of the facility needs to extend past the 11-foot water  
10      depth mark to accommodate both the boat moorage and public facility area.

12      22.     The Staff Report, commencing at page 10, analyzes each of the requirements of  
13      SMP Chapter 6.1, taking into consideration the above Findings. Staff finds that the project, as  
14      conditioned, satisfies all of the requirements of SMP Chapter 6.1:

15           1.A     Strict application of the bulk dimensional performance standards would  
16           significantly interfere with reasonable use of the property. As noted above, the structure  
17           must be at least 60 feet in length to safely accommodate both the proposed police boat lift  
18           and attached canopy as well as the public use area.

19           1.B     The variance is the result of unique conditions including water depth at  
20           this location on the lake as well as the need to accommodate both public use together  
21           with a protected police boat moorage.

22           1.C     The design of the project is compatible with other permitted activities  
23           within the area including the many existing docks and piers around the lake, many of  
24           which have boat lifts with attached canopies. Many of these other docks and piers extend  
25

1 60 feet in length and in some cases beyond. This will also be the only public boating  
2 facility on the lake.

3 1.D The requested variance will not constitute a grant of special privilege not  
4 enjoyed by others. The majority of residents on the lake have their own private pier or  
5 dock, many of which have boat lifts and canopies. The larger size of this facility is to  
6 ensure the dual uses of a police facility along with public access.

7 1.E The variance is the minimum necessary to afford relief. Testimony has  
8 confirmed that the facility must be of the requested size in order to achieve the dual goals  
9 of an effective police boat moorage along with public access that is ADA compliant.  
10

11 1.F The public interest will suffer no substantial detrimental effect as the  
12 facility is designed to better protect the public and users of the lake while also increasing  
13 public access to the lake.

14 23. City Staff further finds that the project, as conditioned, satisfies all requirements  
15 of SMP Chapter 6.2:

16 2.A Strict application of the bulk dimensional performance standards would  
17 preclude all reasonable use of the property for the reasons set forth above.

18 2.B The proposal is otherwise consistent with all other criteria set forth in  
19 SMP Chapter 6(1-4).  
20

21 2.C Public rights of navigation and will will not be adversely affected.

22 24. Pursuant to SMP Chapter 6.3, consideration has been given to the cumulative  
23 impact of similar requests for like actions in the area. Staff notes that this development is unique  
24 and that it is a public project leading to better opportunities for public recreation. No similar  
25 projects are envisioned along Lake Sawyer.

1 25. SMP Chapter 6.4 does not apply as the Applicant has not requested a variance  
2 from Table 1, Chapter 4.

3 Findings Relating to Issues Raised by the Department of Ecology.

4 26. During the public hearing the Department of Ecology raised several questions  
5 regarding the project. As Ecology will be responsible for final approval of the requested  
6 variances, it is important that the Department's concerns be fully addressed.

7 27. As noted in the Public Hearing Section, Ecology correctly notes that portions of  
8 the dock are slightly wider than as stated in the Staff Report. More specifically, the two finger  
9 docks have 3-foot x 3-foot triangular areas at the commencement of the finger docks which  
10 briefly widen the docks at their starting points. For the finger dock landward of the boat  
11 moorage, this results in the dock being 3 feet wider on both sides at its starting point, causing the  
12 dock to initially be 10 feet in width at its starting point, quickly reducing to 4 feet in width after  
13 the first 3 feet. Similarly, the dock waterward of the boat moorage has an additional  
14 3-foot x 3-foot portion on the boat launch side of the dock, causing this dock to briefly widen to  
15 11 feet at its starting point then quickly reducing to 8 feet in width. Although neither of these  
16 additional areas of finger dock are significant, it is important that they be recognized and that the  
17 requested variation include them.

18 28. Ecology has requested a copy of the proposed landscaping plan to make certain  
19 that it provides adequate mitigation to ensure no net loss of ecological function. The Applicant  
20 has provided the required landscape plan which provides for two Shore Pines and three Osier  
21 Dogwoods consistent with the recommendations of WDFW.  
22  
23  
24  
25

29. Ecology has also requested a copy of the proposed fencing surrounding the police boat moorage to make certain that it is of a design and of a material suitable for shoreline use. As requested, the Applicant has provided a copy of the fencing design (Exhibit 9).

30. Staff finds that the project, as conditioned, addresses all of the concerns expressed by Ecology. The Hearing Examiner concurs.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

## CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

2. Any Conclusions of Law contained in the foregoing Background Section, Public Hearing Section, or Findings of Fact are hereby incorporated by reference and adopted by the Hearing Examiner as his Conclusions of Law.

3. All notice requirements have been met.

4. The requirements of SEPA have been met.

5. A Shoreline Substantial Development Permit is required for the proposed use at this site.

6. A Shoreline Variance is required due to the requested length, width and square footage of the proposed use.

7. The proposed use is a water-dependent use promoted by the Shoreline Management Act and is generally consistent with the policies and provisions of the Act.

8. The proposal complies with the requirements of WAC 173-26, including those set forth in WAC 173-26.176(3).

9. The project, as conditioned, is consistent with the applicable policies and development standards set forth in the City Shoreline Master Program.

*Findings of Fact, Conclusions  
of Law and Decision - 19*

**CITY OF BLACK DIAMOND HEARING EXAMINER**  
**299 N.W. CENTER ST. / P.O. BOX 939**  
**CHEHALIS, WASHINGTON 98532**  
**Phone: 360-748-3386/Fax: 748-3387**

10. The project, as conditioned, is consistent with the City's Comprehensive Plan.

11. The requested Variances from the length, width and square footage limitations satisfy all requirements of SMP Chapter 6 including 6.1(A-F); 6.2(A-C); and 6.4 for the reasons set forth in the Findings of Fact.

12. The requested variances from the length, width and square footage limitations as conditioned, should be approved.

## DECISION

The Shoreline Substantial Development Permit and the Shoreline Variance are **approved** subject to the following conditions:

1. If any new or removed landscaping is proposed, a landscaping plan identifying the trees and shrubs proposed by the applicant shall be submitted in association with the building permit application.

2. Specific decking materials in compliance with the SMP's light transparency requirement shall be identified on the building permit application.

3. All portions of the structure shall be set back at least 15 feet from each side property line extended.

4. Use Best Management Practices to keep all debris out of Lake Sawyer during construction activities.

5. Adhere to any HPA requirements to reduce effects on fish and aquatic habitat.

- Remove all construction materials offsite and use proper disposal methods.

7. Adhere to the SMP policies and regulations for building materials. Wooden components that will be in contact with water or over water shall not be treated or coated with

herbicides, fungicides, paint, pentachlorophenol, arsenate, creosote, or similar toxic substances. Structures shall be made from materials that have been approved by applicable state and federal agencies and only the use of non-reflective materials will be allowed.

8. Limit project construction time in adherence to the Black Diamond Noise Ordinance; between the hours of 7am and 8pm on weekdays, 8am and 6pm on Saturdays, and 9am to 6pm on Sundays.

9. While there is no lighting component to this proposal, any future lighting facilities shall be limited to the minimum extent necessary to locate the dock at night. Lighting on docks shall avoid light spill-over onto the water surface.

10. The maximum length of the dock is not to exceed 60 feet All measurements are based on the ordinary high watermark (OHWM) as determined in the field.

11. The maximum width of the dock is six feet within the first 30 feet, waterward of the OHWM, and eight feet elsewhere except where the dock widens briefly for required fillets.

12. The total surface area of the dock shall not exceed 647 square feet.

***Appeal of Decision:*** Pursuant to BDMC Section 18.08.200 and 18.08.230, Type 3 permits are appealable to the State Shorelines Hearings Board in accordance with state law (RCW90.58.180). Any appeal shall be filed within twenty-one calendar days after a final decision is issued by the city. See RCW 36.70C.040(3); BDMC 18.08.230.



1 CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT  
2 AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE OF FILING AS  
3 DEFINED IN RCW 90.58.140(6) AND WAC 173-27-130(7), OR UNTIL ALL REVIEW  
4 PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF  
5 SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW  
6 90.58.140(5)(a)(b)(c).

7 DATED this 22 day of February, 2024.



10 Mark C. Scheibmeir  
11 City of Black Diamond Hearing Examiner